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Abstracting

THE ANALYSIS OF IMMIGRATION TRENDS OF SKILLED MIGRANTS: CASE OF GEORGIA

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Abstract

In this paper we investigate several aspects of the contemporary immigration in post-Soviet Georgia by analyzing some recent trends related to the migration phenomena in the country. Our results are based on an extensive field work with two main groups – one, with skilled foreign immigrants in Georgia, and the other, with return Georgian emigrants, both covering all of the country's territory. Finally, we discuss the return migration and the existing programs of voluntary return between Georgia and other countries, as well as the opportunities for professional realization in the country of the Georgian returnees and the foreign immigrants.

Keywords: Migration trends, immigration, Georgia, return migration, skilled migration

INTRODUCTION

Georgian emigration has been the subject of intensive investigation during the last several years (Jasnova 2012, Collyer 2013, Zurabishvili 2013, Badurashvili 2015, Iashvili and Gvenetadze 2014, Iashvili, et.al. 2016). According to some recent results from research on Georgian migration, the Georgian potential migrants are divided into two subgroups: prospective migrants (with an intention to migrate), represented by one third of people aged 18-50 years including 11.4% being ready to migrate at any moment and non-migrants (with no intention to migrate).The tendency to (re)migrate is particularly high (close to 50%) among returnees, thus indicating a circular pattern (Bardak 2011).

The intention to go abroad is most likely expressed by young single people, being the migration stock gender bias from country to country. Despite of the fact that most of the migrants from Georgia have a higher education, in general they have a more successful professional realization in post-Soviet space than in EU or in other Western countries, where their professional background is usually underestimated. Statistics, offered by the European Training Foundation (ETF) shows that around 48% of the Georgian emigrants have a working experience abroad below their education level, which is even more pronounced in the case of female migrants (70%), who are usually characterized by a higher education level (Jasnova et al. 2012).

According to the ETF research the preferred destinations for Georgian migrants with low and intermediate education level are Turkey (32%), Russia (29%) and Greece (13%). Turkey is a top destination due to the lack of visa requirements for Georgian citizens, while people with higher/better education, tend to prefer the USA, Italy or Germany as an emigration destination (Jasnova 2012, Collyer 2013).

Although several economic reforms were implemented in Georgia including enhancement of foreign investments, stimulation of entrepreneurial activities that have posed the country among the first worldwide countries in international ranking of business activities (Doing Business 2016), it seems that these measures are not enough to regularize the emigration and the brain-drain from the country.

Phenomena, related to return migration are also important along the migration panorama. Return migration is a phenomenon, when migrants return to their country of origin by their own choice, often after a significant period abroad. In general, people who have worked abroad and have returned, are important for the home country's development as they have gained experience and skills, such as language, vocational, entrepreneurship, higher professional skills and so on. The source country can actually gain from the opportunity that its citizens have to acquire experience abroad.

One might enumerate several motives for a temporary migration such as differences in relative prices between host and home country, complementarities

between consumption and the location where consumption takes place, or the possibility of accumulating human capital abroad, which enhances the immigrant's earnings potential back home (Dustmann 2007). The economic and social bilateral programs between several countries are attracting as well national professionals living abroad. Similar phenomena are also observed within the Georgia context (Jasnova 2012).

From the other side, the immigration trends during the last several years show their importance for the country development. The main factors that contribute to its dynamics are mainly related to a relative bureaucratic easiness of doing business in Georgia and the existence of opportunities in the economic, social and educational activities such as low tuition fees and living expenses, quality of education or security, accompanied by political stability in the country, which are attracting a large number of educational immigrants as well as foreign professionals.

In this paper we will focus on the immigration of foreign professionals, who have immigrated to Georgia, attracted by the above mentioned opportunities as well as analyze the skilled return migration of natives discussing as well some existing bilateral agreements.

Our main working hypothesis is based on the fact that the country possesses a rich potential for future development, due to its rich cultural traditions and flexible administrative system, and it could be transformed into an attracting destination for skilled professionals from abroad.

The methodology we have used for is based on qualitative fieldwork with immigrants and returnees to Georgia as well as on statistical analysis and literature data. A total of 60 in-depth interviews have been performed in the following cities and regions, practically covering all of the country's territory: Stephantsminda (Kazbegi) (2), Juta, Etseri (1) (Mestia Municipality), Kutaisi (4), Tsqaltubo (1), Senaki (1), Ozurgeti (1), Poti (3), Batumi (5), Qvareli (1), Borjomi (2), Ninotsminda (2), Oni (1), Lentekhi (2), Zugdidi (1), Signaghi (2), Dedoplistskaro (1), Gurjaani (1), Lagodekhi (3), Tsnori (1), Gori (3) and Tbilisi (22).

The different groups have been selected to have the largest pattern representation in order to have more complete results. The interviewed 33 men and 27 women who had immigrated to Georgia over the last 5 years, were originally from (written in alphabetic order): Bulgaria (3), Canada (3), China (4), Czech Rep.(1), Estonia (1), Germany (5), Holland (1), Iran (4), Israel (6), Italia (1), India (2), Lithuania (1), Nigeria (1), Russian Federation (3), Spain (5), Turkey (6), UK (5) and USA (8).

Five additional interviews with return Georgian migrants from Germany have been also performed. The interviewed had their field of expertise in teaching (high school and university), research, finance, medicine, engineering, trade, management or hospitality.

Many of them were entrepreneurs, social entrepreneurship and social volunteers. A large group of the interviewed formed part of teams involved in international organizations and in international projects.

As for the second group of the interviewed skilled foreign migrants, 19 were associated with the educational sector (high school and university), 7 with some European projects, both being presented with temporal contracts in Georgia. From the rest of the interviewed, 17 cases expressed their success in creating an own business, while other 7 reported about some difficulties in starting an own labor activity.

Additionally, other officials who specialize in the management of immigration in Georgia have been also interviewed. Between them are the coordinator of ICMPD (International Centre for Migration Policy Development) and the corresponding representatives from different projects such as ENIGMMA (Enhancing Georgia's Migration Management), GIZ (Deutsche Gesellschaft fuer internationale Zusammenarbeit) and ARISC (American Research Institute of the South Caucasus); representatives of the Austrian-Georgian commerce chamber, representatives from the German Economic Association (Deutsche Wirtschaftsvereinigung), representatives from the Public Service Hall as well as researchers and professors at Ivane Javakhishvili Tbilisi State University, Akaki Tsereteli State University in Kutaisi and from private universities in Tbilisi.

Our research is based on Grounded Theory approach (Glaser 1967), according to which a systematic methodology through the analysis of qualitative data is performed taking into consideration different data such as interview, surveys, statistical analyses, as well as literature data.

The paper is organized as follows: in Section 2 we analyze the migration trends in Georgia paying attention to immigration and return migration phenomena. Section 3 is devoted to the skilled migration in Georgia, analyzed from the field work and numerous interviews. The last section presents the final conclusion of the present analysis.

IMMIGRATION AND RETURN MIGRATION TO GEORGIA

Immigration to Georgia

Georgia has a relatively liberal visa regime for a vast majority of countries, for whom no residence permits are necessary to live and work in the country. The recently started Georgian migration policy on September 1st, 2014, based on the new Law entitled "The Legal Status of Aliens and Stateless Persons", was a step toward a new migration strategy. With the amendments from 2015, based on continues monitoring and recommendations from different institutions, the visa and residence requirements

concepts were specifically developed (State Commission on Migration Issues Georgia 2014). According to the National Statistics Office of Georgia, the residence permits issued in 2014, are shown in the following Table 1. The predominance is given to the temporary permits, followed by permanent and labor permits, respectively.

Table 1. Residence permits according to the permit type (2014).
Source: National Statistics Office of Georgia.

Permit Type	Total number
Temporary permits	34425
Permanent permits	10827
Labor permits	2804
Residence permit of former citizen of Georgia	1929
Training permits	1217
Family reunification permits	502
Special permits	196
Permanent investment permits	57
Total	52974

The top five countries of origin of working residence permit holders are represented in Fig. 1, where the recent dynamic patterns of Chinese and Turkish applicants are clearly seen.
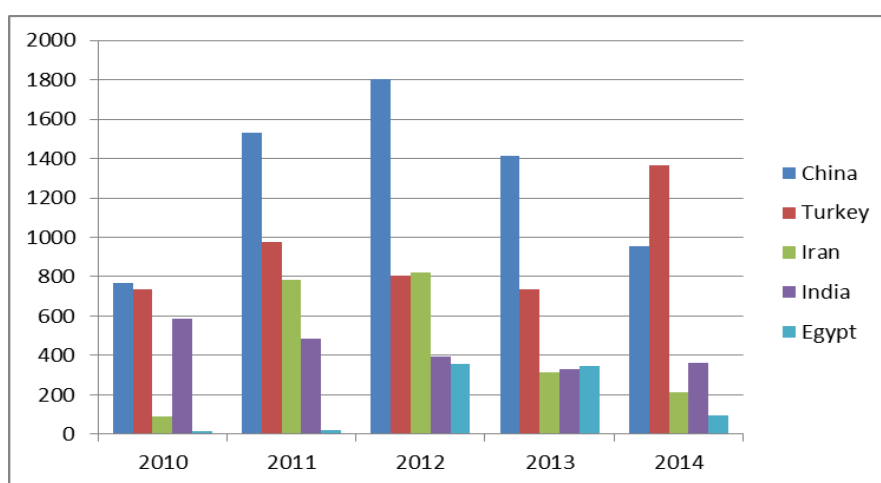
Fig. 1. Top five countries of origin of working residence permit holders (2010-2014)
Source: Public Service Development Agency.

Regarding the origin of the naturalized citizens[1], the statistics is dominated by Russian citizens with a high rate of approval, followed by Turkish, and in a less extend by Israeli, Greek, USA and Armenian citizens (Table 2).

Table 2. Approved applications for naturalized citizens by country of origin.
Source: State Commission of Migration Issues (2015).

Country	Approved Application (absolute numbers)
Russia	25992
Turkey	3033
Israel	1151
Greece	1143
USA	1097
Armenia	670
Others	4855
Total	35769

The above statistics confirms some trends in the recent Georgian migration panorama. A tendency for decreasing after 2012 for the most countries is observed except of Turkey.

Educational immigrants

The higher education in Georgia is considered as attractive due to its good level and low matriculation taxes. This is clearly reflected by the number of foreign students studying in Georgia, which is continuously growing in both state and private high educational institutions. From the other side, one has to mention that the number of Georgian students, studying abroad is also continuously increasing due to the different programs and opportunities for young people (Study in Georgia 2017).

The educational immigrants are mainly dominated by male students from Azerbaijan, India, Turkey, Nigeria, the Russian Federation, and Iraq although there is a tendency for increase of the female ones, both showing an increasing trend after 2010 (Fig. 2). This is accompanied by a continuous offer of different educational programs such as bachelor, master, PhD programs and an increasing number of universities offering foreign language educational programs (International Admission Department

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[1] Naturalized citizen is a non-citizen in a country that has acquired citizenship or nationality of that country.

2017). According to the opinion of students from state and private Universities with whom interviews have been performed by the authors, attractive educational offers in terms of lower tuition fees and the recognition of the degrees awarded by Georgian educational institutions are crucial especially for students with interests in medicine, social sciences and humanities or business.
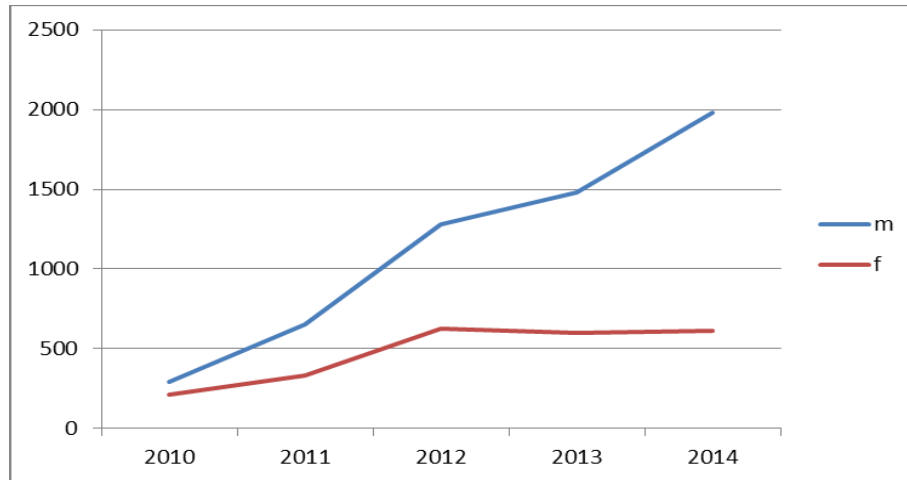
Fig. 2. Evolution of the male (m) and female (f) immigrant students in tertiary institutions (2010-2014). Source: Ministry of Education and Science of Georgia.

Labor Skilled immigrants

The access to the labor market for foreign immigrants is regulated by the Law of Labor Migration (Georgian Department of Labor 2016). The analysis of the statistics of the total number of work permit during the period 2010-2014, show that the major part of them corresponds to the five top countries of origin: China (6,467), Turkey (4,618), Iran (2,222), India (2,156) and Egypt (842) (SCMI 2015). An example is given by the foreign entrepreneurs and investors, whose arrival is related to a pronounced increase of the immovable property. The statistics, offered by the State Commission on Migration Issues (SCMI 2015), shows an increase of investment in non-agricultural land when the moratorium on land ownership for foreigners was introduced, thus registrations of non-agricultural land slightly increased from 1,273 in 2013 to 1,651 in 2014 (SCMI 2015). Although more statistics is still needed, there is evidence that foreign investments in Georgian agriculture create significant spillovers of knowledge and innovation that local farmers can benefit from (AgricisTrade 2015, ISET 2016).

In terms of country of origin, the majority of the foreign investors come from Russian Federation, followed by investors from Azerbaijan, Ukraine, Armenia, Greece, Israel and USA (Fig. 3). The positive effect on the industry and construction sectors of the Georgian economy is reflected in the declarations presented by the foreign companies (National Statistics Office of Georgia 2017).
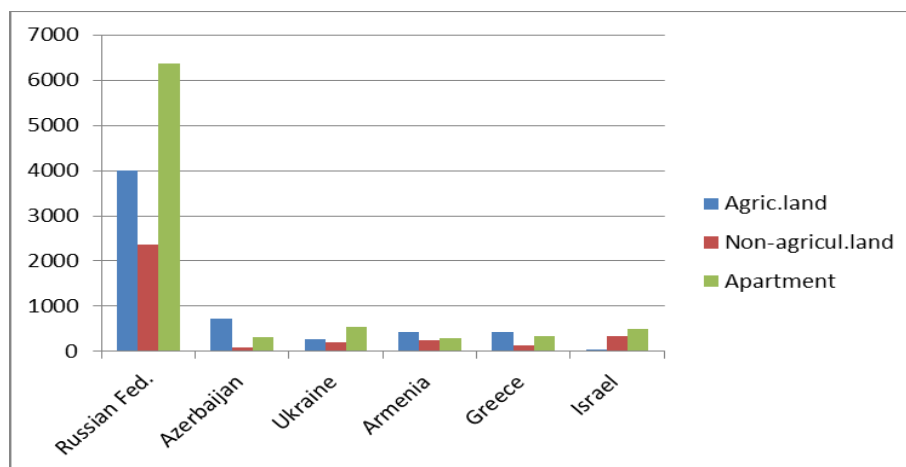
Fig. 3. Owned immovable property in Georgia by foreign nationals by citizenship (2010-2014, top 6 countries). Source: National Agency of Public Registry.

An interesting segment is represented by the foreign-profit and non-profit enterprises and branches of foreign companies, registered in more extend in Tbilisi and Adjara region, followed by Kvemo Kartli and Samegrelo-Zemo Svaneti regions. The number of the registered enterprises during the period 2010-2014, coming from the top 6 countries of origin i.e. Iran, Turkey, Egypt, India, Russian Federation and Azerbaijan is represented in Fig. 4. The main areas of investment are the food production and agriculture, hotels and restaurants, construction and real estate, transportation, financial and insurance services, etc. (National Agency of Public Registry 2015).
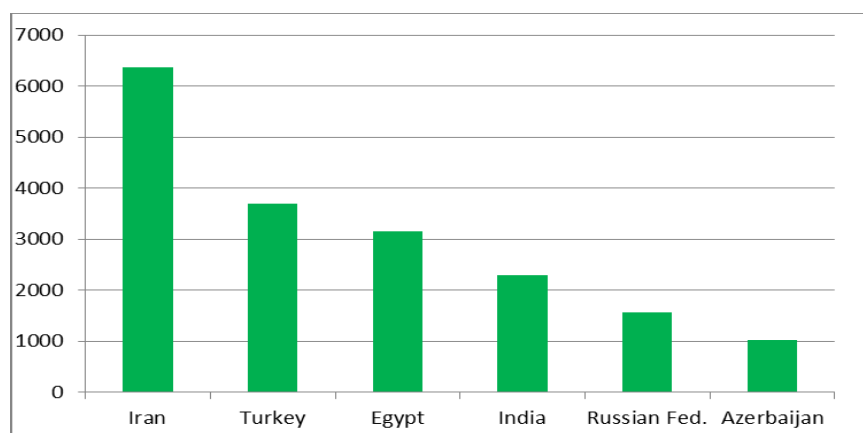
Fig. 4. Top 6 foreign-profit and non-profit enterprises registered (2010-2014).
Source: National Agency of Public Registry.

Return migration to Georgia

There are several attempts in the literature (see Dustmann 2007 and the references therein), trying to quantify in a more rigorous way the return migration by modeling it using the fact that the immigrants decide to return home when the benefits of staying abroad are lower than the cost. According to these models, when the marginal utility of wealth decreases, the benefit of migration slowly decreases. This alone does not trigger a return migration, because, whatever the immigrant's wealth, it is always advantageous to remain a further unit in a country that pays a higher wage. Thus, one has to assume that migrants have a preference for consumption in their home country. As a consequence, benefits of migration decrease over the migration cycle, while costs are positive and may increase, which may lead eventually to a return migration (Dustmann 2007).

Concerning the case under study, the main reasons for Georgian emigrants to return to Georgia are related to emotional and economic problems, being mainly dominated by family obligations (the biggest proportion) and homesick followed by residence permit expiration, unemployment, and deportation (ETF 2013). The latter reasons especially concern illegal migrants as well as those, who were involved in low-paid jobs in abroad, in EU or other Western countries. However, some other reasons are not excluded, like it happened between Russia and Georgia in 2006 due to spoiled political relationships. Many Georgian migrants were deported by the Russian government with rude violation of human rights and many others left the country voluntarily ("Georgia against Russia" 2012).   The statistics differs slightly on the gender (Fig. 5).

The main difference between both genders is observed regarding the unemployment, which is around three times lower for woman (European Training Foundation 2013).
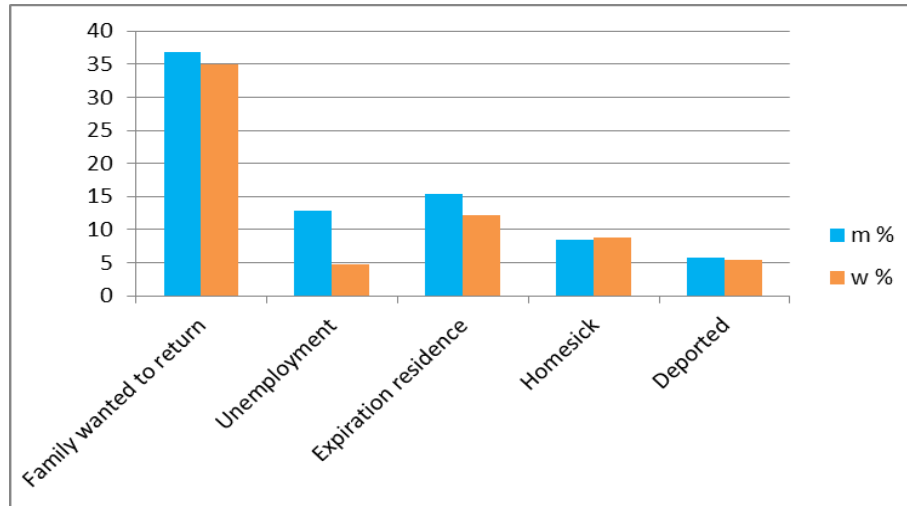
Fig. 5. Main reasons to return to Georgia depending on gender (m – male, f – female)
Source: European Training Foundation. ETF (2013).

According to the ETF survey (Bardak 2011), once back, only around 30% of the returnees manage to find a job and due to the poor conditions of domestic labor market around half of them have the same job they had before.

As a general rule, the educated people tend to enjoy a more successful return than less educated people, the later facing a series of difficulties to fit into the Georgian labor market (Jasnova 2012). In this sense, more support for the creation of employment and job opportunities in terms of job-matching, placement services and labor market management, increasing legal labor circular mobility with a gradual liberalization of entry visas for beneficial migration and sustainable return are necessary.

The countries from which the majority of returnees came back are dominated by Greece, Poland, Belgium, and France due to the existence of voluntary return program offered by the International Organization for Migration (IOM). The reintegration package includes various types of medical treatment for returnees, temporary accommodation, vocational training courses, setting up small businesses and public education. The programs for the Georgian nationals to assist in return from Switzerland, Austria and Netherlands also exist. These programs are supported by IOM and operating in Georgia since 2009, when Georgia entered into a mobility partnership with the European Union (IOM-GEORGIA 2016).

In the following Fig. 6, the numbers of beneficiaries of return programs, corresponding to 2014, by country of origin are represented respectively upon their gender.
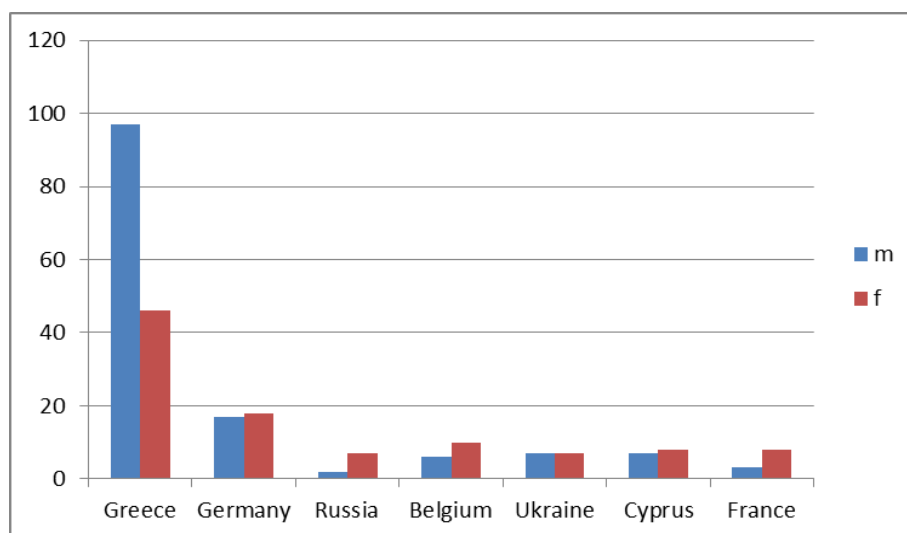
Fig. 6. Origin countries of returning citizens registered in 2014 (m – male, f – female).
Source: State Commission of Migration Issues (SCMI 2015).

The Center for International Migration and Development (CIM), which is promoting the cooperation between the German and other Governments in the area of global migration for sustainable development, plays an important role in the sphere of return migration. The Center is supporting Georgia with a pilot migration project in return and circular migration between Germany and Georgia (CIM 2013). The CIM project which started in 2007, has been supported by the German Government and the EU and helps Georgian professionals to go back from Germany to Georgia providing them an information and support on starting up an own business or/and to find a job in Georgia.

In total, there were 28 persons who have participated into the program, 10 of them belonged to the nursing sector and the other 18 to the hospitality sector. From the second group of the participants, 13 professions have returned, but only 4 of them have a work in the sector. On the other side, only one nurse has returned from Germany to Georgia.

Although for the moment there are only few examples of successful return, it is believed that this project will contribute to improvement of professional skills and the country's development toward effectiveness and innovation.

SKILLED MIGRATION IN GEORGIA – ANALYSIS OF THE FIELD WORK

Skilled migration refers to any migrant (immigrant or return and circular migrant) who has special skills, training, knowledge, and ability. This is usually referred to as brain gain, raising thus the average level of education of the remaining population in a way that may stimulate economic growth (Wadhwa 2008). Skilled migrants, who have returned after acquiring work experience abroad (i.e. original returnees), generally increase their employability and entrepreneurial skills often relying to their savings to invest in business activities after their return. The skilled return migrants give also an important influx of entrepreneurial and technological skills and financial resources. Their own network abroad helps to enhance effectively the host country's economic development and productivity. In this way, brain circulation reflects the positive aspects of movements, such as the development of expertise, business contacts, scientific exchange and cooperation and technology transfer (Docquier 2011, Jasnova 2012).

In the following we discuss our main results related to the Georgia country's characteristics, possessing all the ingredients to be transformed into an attracting destination for skilled professionals from abroad.

Analysis of the foreign educated and skilled labor migrants

Almost all foreign skilled migrants consider Georgia as a very rich country culturally and traditionally, with important geographic resources and impressive landscapes. Between the most attractive aspects that the respondents cited are the potential for development in almost all economic branches, the country's tourist potential, the low taxes, the effective and transparent administration, the simple way to formalize starting a business and the profit margin when performing it. Note that in 2016 Georgia was rated at 16th place of Ease of Doing Business by the World Bank (Doing Business 2016).

Generally, the interviewed were satisfied and integrated in the Georgian society (mainly in Tbilisi and other cities), although some of them reported about arbitrary procedures, differences in culture, education, gender issues and up to some extend irresponsibility. These perceptions were mainly expressed by people from Western countries, although all of them reported that they were impressed by the nature and the country's cultural heritage.

The critical statements about gender issues were generalized and not only expressed by female participants that clearly show the necessity of long-term programs in this aspect. Some of them have started with the help of some international programs within different international organizations such as, for example, the UNDP.

In the following we present some of the more important affirmations taken from interviews with foreign professionals during a 6 months' field analysis performed in 2014-2015.

The analysis of the representative groups of *foreign skilled migrants* in Georgia shows that the majority of the foreign investors coming from some neighboring countries like Turkey, Iran, Russian Federation or Israel, are investing in the Real Estate, retail and service sectors. They have a critical opinion about the business opportunities and conditions in Georgia but they are willing to continue with their investments in the country. Some of them are in favor of doing business mainly in the capital and the biggest cities, although some investors are also interested up to some extend to do it in the countryside, especially regarding the tourism development. This segment of the foreign skilled migrants is within the most willing to settle for a longer period of time in Georgia.

M., 50 years, Male: "I like very much the security system in Georgia. It is easy of doing business, the taxes are low. There is a good profit margin while doing business."

The foreign skilled migrants coming from USA and UK are mainly working in the educational sector (secondary school and universities) within some temporary programs. They have introduced new educational and social projects and practices to the Georgian students and have enriched themselves by the Georgian cultural heritage and customs.

T., 40 years old, Male: "I like traditions, landscape, foods, ancient history, dance, hospitality (makes the West a shame), people care about people."

L., 27 years old, Female: "I like very much the nature, the way of eating and drinking, the food, that everything has a solution, the international connections that I have access."

The professional experts are mainly working within some European projects or European institutions and programs, as well as NGO's. Their labor is considered important as they contribute for the process of integration in European structures. The opinion of these professionals about Georgia is positive and stimulating, although of some criticism related to gender issues.

A., 40 years old, Female: "I like the country (the nature) and the climate very much. I like as well the food, the wine, the hospitality, the style of doing things (they don't plan), but I dislike crazy traffic and the lack of tolerance."

As has been stated previously, the number of the foreign and exchange students from all around the world has sharply increased during the last 5 years, thus contributing to the cultural exchange and traditional interchange between the young people. The exchange programs, including European educational projects enrich the country's educational level and gives opportunities of exchange of national and international students.

K., 22 years old, Male: "I would say I am satisfied. I did not have many expectations but so far I am sure that I made a right decision to come here. I like that Georgia is so different, with many different faces. When it comes to nature then Georgia has flat lands, sea, half deserts, and mountains. I love Georgian food. I like people here. I like that there are a lot of places to visit in Georgia."

An aspect that should be changed is the approach towards students from developing countries, studying in Georgia, which have big difficulties getting residence permits and finding accommodation. By promoting the enrollment of these students, which mostly belong to the high classes of society, and who will leave Georgia after completing their studies, will contribute financially to the Georgian economy (with the remittances their families are sending them) and also helps to promote the Georgian culture worldwide.

Analysis of the native returned skilled migrants

To analyze the representative groups of *returned skilled migrants* in Georgia, we have focused on the project entitled "Strengthening the Development Potential of the EU Mobility Partnership in Georgia through targeted Circular Migration and Diaspora Mobilization" that has started recently between Germany and Georgia in terms of labor migration.

Within this project, a potential realization of the majority of the returnees is the hospitality sector in Georgia, offering a big potential for development. The South Caucasus region has a long history of tourism, which is currently revitalizing after the post-Soviet collapse. Tourism is one of the most important areas of the country's economy and it is expected that it will be properly developed.

The interviews performed during the field work with returnees revealed that there are big obstacles for the experts coming from a social science discipline. They have limited opportunities for a work in state administration NGO sector.

T., 30 years old, Female: " After promoting and defending my PhD in Social Sciences in Germany, I decided to come back to Georgia to live close to my family and to

contribute with my knowledge to the country. However, I see that this decision was not very correct as I cannot find a suitable professional realization. Thus I am forced to look for an administrative job and it is not what I am interested in."

On the other side, the finance sector offers better opportunities for professional development. This is also observed with the experts from some engineering professions who were able to find realization in big private projects related to energy and water resources distribution.

It seems that an important part of the returnees is also willing to develop some own tourist projects related to hospitality, green and eco tourism, eco agriculture or cultural and wine tourism. This segment is still at the beginning stages, however a lot of opportunities exist for foreigner and returned entrepreneurs.

M., 45 years old, Male: "After more than 7 years living in Germany, I have returned to Georgia with the intention to make some entrepreneur project in the domain of tourism. The country possesses a huge potential that has to be developed."

The country's administration is interested in to make similar project a reality, making them easy by providing a transparent, user-friendly, fast and almost fully computerized support for carrying out business activities and the related administrative tasks. This conclusion, sustained by numerous interviews, statistical data and literature, actually confirms our initial working hypothesis and shows in a consistent way the potential that the country possesses and the opportunities that it can offer for its future sustainable development.

CONCLUSION

In this paper we have analyzed the recent phenomena of skilled migration to Georgia by performing an exhaustive field research and interviews with different groups of skilled migrants (foreign migrants and native return migrants) coming from different areas of competence.

As a general conclusion of the analysis, one can state that Georgia is perceived as a country of opportunities due to its effective administration, transparency and safety. It is appreciated by its landscape, ancient history, traditions and hospitality as well.

The interviews with the return migrants have revealed that those people who came back mainly within the framework of some European return program, have the opportunity to work in different branches of the industry and service sectors at relatively good positions. These conclusions are also supported by the interviews with the group of foreign skilled migrants, who have the opportunity to work under some European or

international projects, as well as to invest in the country by profiting of the business challenges in Georgia. Both groups are interested in to work in projects from real estate, retail or tourism sectors, where there is a lot of demand of professional employees. With its natural resources Georgia is an attractive destination for entrepreneurs who are interested in to develop their own projects in the environment of easy, transparent, fast and efficient administration with little regulations, which will contribute to the economic development and social enrichment of the society.

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Indexing
Abstracting

THE END OF POLITICS: DECONSTRUCTION, DECLINE AND ALTERNATIVE OF THE STATE

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Abstract[1]

The paper represents theoretical investigation into the phenomenon of decline of the state. It addresses three basic and mutually connected investigation areas, introduced in deconstruction of the state, decline of the state and alternative of the state. Primarily, theories of the origin of the state are exposed, where the state's essence is located; its function – identified and the role it has been playing – observed. In following, the decline represented as a process of transfer – with the state as its main subject, is interpreted through different prisms, particularly the one of federalism, postmodernism, decentralization and libertarianism. The specific focus is laid on the process of decline of the state, following the libertarian theoretical framework. The process is determined by the decrease of the state's functions, occurring in certain period of time. Accordingly, the process is analyzed and divided into four phases, each of them identified with a certain type of state, with an exception. Ultimately, the alternative of the state is emerging as last phase and final outcome of the process of decline of the state, while introducing a new era, the one of no politics.

Keywords: state, libertarianism, politics

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[1] This paper was previously presented by Nikola Lj. Ilievski at IAPSS World Congress 2017, Budapest, organized by the International Association of Political Science Students.

INTRODUCTION

There are several works – namely books and journal articles using the phrase *the end of politics* in their topic, referring to a future or a potential social context, in which the communications, attached to the technology development, would achieve a new, higher, advanced level, and the need of politics, generally – the state, would be exceled. The specific inspiration behind the paper could be found in the article *The End of Politics*, written by Max Borders, published by *Foundation for Economic Education* on 2nd September, 2014 (Borders, 2014).

What is politics? The politics can be determined as a *complex network of activities* related to *leading*, *managing* and/or *running* a state. The main method of the leading, managing and/or running, in specific - the state, is utilizing political power - the power of practicing *organized coercion*. The end of the politics is a phrase, linked to the end of activities related to leading, managing and/or running a state. Analogically, it is attached to a stateless social context, lacking the institutional infrastructure of politics – the state. Without it, there is no *politics*. The end of the politics embraces the process of *decline of the state*, and could be identified with the result of the process, namely *a stateless society* – anarchy.

This paper *addresses the concept of the state*, omnipresent in almost all *intellectual* and human history, and the concept of decline the state, examining the tendency of decreasing and diminishing its role and scope. Following a great political academic, which declare the end of history and triumph of liberal democracy and liberalism (Fukuyama, 1994), some perceive the political history in the form of clash of civilization (Huntington, 2010) and foresee the rising division line among democratic and autocratic axis in international context (Kagan, 2008); there are also some, researching the **possibility**, **desirability** and the **justification** of a social context without *state-existence*, having in mind that in our reality, the state-existence is the *maxim*, not the *exception*. The *purpose of the paper* is to provide answers to the following questions: what is the *state's origin*; what is the *state's essence*; what *functions* does the state provide; what kind of *actor* the state appears in the social relations; what *role* does the state plays in the society; what covers the concept *decline of the state* and what is the *alternative of the state*?

DECONSTRUCTING THE STATE

The start point of this theoretical investigation into the state's nature and its transfer would be making distinction between two similar or even identical concepts – the one of state, and the one of government. In broadest sense, the state is determined as an entity, composed of three cumulative elements – government, territory and

population (Di Matteo 2013, 3). But, in narrow sense, the state and the government are regarded as identical, due the government remains the institutional element of the state – its operationalization. Furthermore, there would be existence of territory and population without *state* in the form of *country*, while there is no existence of the government without state, or the opposite, that leads of establishing connection and identification.

STATE'S ORIGIN

The state represents a social *phenomenon*, found in the history and the present, characterized with certain type of *authority*, *defined* variously, determined by the theories embracing its *origins*. The general theoretical investigation into the state involves *organic* and *mechanic* approach of it, while the theories are divided into (a.) *evolutionary*, (b.) *force*, (c.) *conflict*, (d.) *divine right* and (e.) *social contract* ones. The state in its modern variation is distinguished from it in the past, but there is *common denominator* that makes the ideas of it, and the politics, *universal* ones.

Aristotle, one of the greatest (political) philosophers adopts the *organic approach* of the origin of the state. In his *Politics*, the state is determined as a *community* (state-community, city-state), the one *transcending* others, such as the family and other social ones. The state is "the most important community" and its creation is linked to "the maintenance of life" (Aristotle 2006, 5-9). Furthermore, he claims, the state not to be an *artificial* or *social* (conscious or spontaneous) creation of the *human interaction*, but rather, a *natural community* (Aristotle 2006, 8), following the emergence of the human species, *prior* to human interaction. According to the theory's framework, the state appears as a *natural* and *evolutionary phenomenon* – community.

The voluntary theories locate the origin of the state in the *institute of social contract*. The social contract is identified with the conscious process of *state-creation* (Ilievski, 2015). The subjects of the state are the individuals, which limit their own freedom in favor of a newly established *political community*. Several philosophers such as *Thomas Hobbes*, *John Locke* and *Jean Jacques Rousseau*, implicitly, are writing about this kind of *political integration* (Ilievski, 2015). *State of nature* (Hobbes 2010, Ch. XIII) is the outcome of the social relations, prior to the appearance of the social contract, according to these social contract theories. This condition is recognized as a condition without organized - *political authority* established, and the human behavior is characterized as *selfish* and *destructive*, resulting in a *war of all against all* (Hobbes 2010, Ch. XXIII). The solution of the life-*unsecured* condition becomes the *Leviathan*, symbolizing the state, as a form of *political integration* and common *establishment* and *justification* of the political authority. Correspondingly, John Locke finds the state - social contract and political integration, a guaranty of *human life*, *liberty* and *property* (Locke

2006, 230). Jean Jacques Rousseau, as his social contract's predecessors, determines the social contract as a *social consensus*, or a so*cial will*, developed with the purpose of establishing and remaining a *common welfare* (Rousseau 1978, 47-53). According to the voluntary theory of state's origins, it appears on the social scene in a certain phase of human development, based on a (*hypothetical*) *consent argument* (McLaughlin 2007, 90) and created with a certain *goal*, securing *life*, *property* and *maintaining social order*. It is regarded as a *social*, or an *artificial phenomenon – community*.

In accordance with the *Marxist approach* of the origin and the nature of the state, the one is regarded as a *class instrument* and a *tool* for establishment and maintaining "hegemony of the rich and powerful over the poor and weak" (Nitisha, 2016). In *Friedrich Engels's* words, the state represents *social force*, placed above the society, *alienating* from it (Lenin 1960, 3), while *Karl Marx* concludes that it is "an organ that legalizes and consolidates the exploitation" (Lenin 1960, 4). Marx declared the state to be a *reflection* of the social processes and an executive *instrument* of the social groups (Spektorski 1933, 22). Furthermore, it's emergence on the social scene is connected to the appearance of the institution *private property*, and it mainly is utilized as a tool (instrument) for protection of it, while exploiting the *marginal classes* in the society. According to this theory's framework, the state appears as a *social* or an *artificial phenomenon* – governed by the powerful and rich.

Franz Oppenheimer covers the origins and the nature of the state while adopting *mechanic approach* of state's origin. In his book *The State*, he defines it as an "organization of political means" (Oppenheimer 1926, 27). Additionally, he describes two opposed means of satisfying the human's desires, the *economic one*, and the *political one*. The first represents means that essentially are *non-coercive - but voluntary*, while the second ones are those of violence, robbery, threat – *the coercive ones* (Ilievski 2015, 3). As an *organization of political means*, the state is an institution that involves violence, robbery and threat with violence. Oppenheimer compares the state with the institution of *slavery* (*ownership of slaves*) – *slavery of labor* (Stirner 1907, 152), and locates its genesis in the *nomads* (Oppenheimer 1926, 37), which have been practicing *conquering* and *exploitation* (Rothbard AS, 16) of the people and their property. According to this theory, the state is described as a *criminal gang*, utilizing violence and threat with violence – **coercion**, as a mean of its involvement in the social relations, gaining benefits from *practicing blackmailing* of certain people, on given territory. Following, the state does not appear on the social scene as a *natural community*, but rather as *conscious*, *social*, *coercive* and *artificial* one.

Table 1: Typology of state's origins (Source: Our own depiction)

Theoretical background	State's origin
Aristotle's philosophy	Natural community
Voluntary theories	Social contract
Marxist's approach	Class instrument
Oppenheimer theory	Organization of political means (Violence, robbery, threat)

STATE'S ESSENCE AND FEATURES

There are various definitions of the state as a social phenomenon, each of them starting from its own theoretical point of view. As written, it is regarded as a *natural community* or a *social community*, differing mainly in its roots, located in the *nature* or in the *human actions*. From the standpoint of the modern political philosophy and social science, it could be detected a unique essence of the state as a *common denominator*, following its *development* and various *manifestations* throughout the history.

The state is regarded as a territorial community with an ultimate authority (Spektorski, 7). It is "the supreme power, within its territory, and by definition the ultimate authority for all law, i.e. binding rules supported by coercive sanctions" (Dosenrode 2007, 19). *Jonathan Wolff* defines it as a "group of persons who have and exercise supreme authority within a given territory or over a certain population" (McLaughlin 2007, 74). *Hans Herman Hoppe* continues with the description of it as a "territorial monopolist of compulsion – an agency which may engage in continual, institutionalized property rights violations and exploitation – in the form of expropriation, taxation and regulation – of private property owners" (Hoppe 2007, 45). The most used and common definition of the state, is the one according to *Max Weber*, determining it as "a human community, which successfully claims monopoly on legitimate use of physical coercion, on certain territory" (Fukuyama 2012, 24).

Following, it can be concluded that the essence of the state is the *use of violence* and the *threat with using violence – **coercion***. It is unique human community, or social institution, practicing and based on *coercion*, while it is *legitimized*. The legitimacy presupposes *hypothetical consent* of the units – individuals, which are *objects* to the *subject's* use of coercion. It is a unique *social institution* that articulates *condign power* (Galbraith 1995, 4) in the process of *goals-achieving*. The *legitimized condign power* is identified as a *political power* - the *power of institutionalized violence* (Rand 1967, 53). As any other *social institution* deconstructed, it remains a *hierarchical structure of*

individuals, specifically different from other institutions, with *sui generis nature* - possessing *quasi-legitimate* right of practicing coercion.

The state, as a social institution, *quasi-legitimately* utilizing coercion, (.a) provides its *functions* related to its citizens, (b.) remains an exclusive *actor* in the social processes and (c.) plays a *role* in the society with its unique essence.

The functions the state provides could be divided in three parts: *protection*, *welfare* and *social planning functions*. (a.) The protection functions of the state – *the core* functions, covers its authority to engage in the *social (interpersonal) relations* (Ilievski 2015, 10), when an individual right is violated. The concept of individual rights covers the right to *life*, *liberty* and *property* (Locke, 2006), not expanded with other rights - which could be regarded as *privileges* (Rand, 1967). (b.) The welfare functions - the state provides, are followed by the primary protection functions. Despite the primary function, it positions itself as a *nanny* (taking care of its citizens). The welfare function of the state could be observed in its interference in areas such as *education*, *health*, *retirement* and other *social processes*. It provides, within its frames - not just a protection of the individuals rights, but also educational, health, retirement and other social services. (c.) The social planning functions of the state embraces the services linked to *planning* and *regulating* almost each aspect of *human living*, *interaction* and *social relations*, particularly *each economic activity* (Hayek, 2011), and consumes previous functions.

Determined by its practicing activities, the state positions itself as a unique *actor*, identified variously as a norm establisher, social relation participator and punishment executor. (a.) The state remains the main *norm establisher*, operationalized through the *law* - as a system of norms, based on the state's essence – the *coercion*. (b.) It could also engage in social relations, as an *equal actor* in the social context, nevertheless they could not be regarded as equal, observing their different essences. (c.) And the main practicing **activity** is appearing as an exclusive *punishment executor* – practicing **coercion**, the base behind the *norm establishing* and the *citizen's duties* toward the legal norms.

The role the state plays within society could be distinguished, to the one of *guardian of social order* and *instrument of social change*. (a.) The first role of the state is attached to *preserving* the current social order, as a *totality of social relations* (Calvert, 1994). In fact, the state appears as the base for *social-organizing*, preserving the already established *rules* and *institutions* for resolving problems among individuals, utilizing coercion, as its essence. This type of social order, where the state plays the main role can be described as *imposed order* (Bamyeh 2009, 28) or *conscious order*. The order that could potentially evolve with *marginalizing* the state's role or *diminishing* it, could be described as *spontaneous order*, *polycentric order* (Hayek 2011, 230), *voluntary order*, *unimposed order* (Bamyeh 2009, 28), or *natural order* (Hoppe 2007, 71). (b.)The opposite process of maintaining *social order* is the process of *social change*. It refers to "any

significant alteration over time in behavior patterns and cultural values and norms" (Cliff-notes, 2016), mutually determined with the socio-political context. The social change also covers getting from one state of social stability to another; the changes of the social structure and relationship within society *as individual network of dependencies* (Elias 2001, 14) and the modification of the basic institutions, during specific period (Goodwin, 2008). The state could play a major role in the process of initiating social change, (similar to the maintenance of social order), through its capacities of *imposing* change, following the *top-down* approach, justified by the *legitimacy of coercion*.

DECLINE OF THE STATE

Typology of the Decline of the State

The process of *decline of the state* (Hammarlund, 2014) covers the *decreasing* of the role it plays in the social relations, the *transfer* of the functions it provides, the *tendency of narrowing* its scope and its potential further *diminishing*. The process is attached to various processes in the modern age - technology development, intense communication networks and social changing, *mutually determined* with the individual's mentality advancement. The decline is linked to the changes occurring in state's functions, role and activities, particularly transferring and limiting the scope of the state's interference in favor of various *entities*. The level the transfer occurs and the entities empowered with its features are the following: (a.) administrative level – *state's entity*; (b.) federal level – *state's entity*; (c.) local level – *public entity*; (d.) subnational level – *public entity* and (e.) private level – *private entity*.

From the categorization of the transfers, three types of decline could be distinguished: (a.) **improvisatory decline of the state**, where the features are transferred to other entities that are part of the state as a hierarchical structure, and the *political center* is not challenged – *state's entity*; (b.) **semi-substantial decline of the state**, where the features are transferred to *public entities*, that are located out of the state as a hierarchical structure, but rely on it as a *social relation participator* and *punishment executor*; and (c.) **substantial decline of the state**, where the features are transferred to *private entities*, that differs from the state in its essence.

FEDERALISM AND POSTMODERNISM

Federalism in a broader sense represents political theory, which lays focus on the political unification of the two or more political entities - states. *Karl Fridrich* defines it as a process in which certain political communities are uniting, in order to find solutions for *common problems*, establishing *common institutions*, practicing *common*

decision-making and adopting *common policies*. Accordingly, the political entity, particularly the state, transfers certain *amount* of its features to a newly formed *federal center*, establishing federation, as a *final political community – finalite politique* (Kovacevic 2013, 66-68). With the establishment of the federal center, the state delegates some of its authorities to the federal center, but preserves the rest of them. Its identity is not diminished in the frames of the federation, but it is - in an international context. The established federal center does not absorb all the features of the states, but rather they are shared with the federal entities (states) authorities – *dual sovereignty* (Cameron, Falleti 2005, 257). In the case of federalism, the transfer of the state's features occurs on a federal level, which could be identified as a process of *decline of the state*, decline of a certain type of state – *nation state*. In fact, there is an *improvisatory decline of the state* therefore the features are transferred to other entity-federation essentially remaining a state, with its identical essence and features. The federalism is described as a process of decline of the nation-state, as a specific type of state, but *improvisatory*, while within it, a new type of state is born – *federation*.

The term *postmodernism* is a broad term that embraces various worldviews, philosophical and art movements – followed by particular activities in the contemporary politics, on domestic and international context. In the frame of politics, *postmodernism* is amending the *modernism*, with its central subject – *the nation state*. Following, the term describes various political determinations, with a focus on the tendency of *decline of the state*, operationalized in the form of *international public governances*. Within the political *quasi-structure* of postmodernism, the nation-state is no longer the *exclusive actor* in the international context (Cooper, 1996), and correspondingly, it loses its *modern* and *absolute* sense in domestic context. The state's features are transferred, the powers are reallocated, and sovereignty delegated in favor of international public organization. Accordingly, the subnational organizations appear as an important factor in the national and international governance. Their role is of great significance, but not regarded as a *total alternative* of the state due the (*nation*) *state* preserves the dominant position in the international and domestic context. The power-sharing among the state and the other types of governance, within the international context, denotes that the sovereignty of the state is *disaggregated* (Slaughter 2004, 267). The international organizations could not be identified as state's entities – they are not part of the state's hierarchy, nor as private ones, they are neither privately established, nor driven - but could be as *public* ones. Since defined as public entities, *the decline of the state* could be regarded as *semi-substantial*, due the fact that its essence is not challenged, but potentially delegated. The appearance of the state as a *social relation participator* and *punishment executor* maintains, while the appearance as a *norm establisher* could be transferred to the *public entity*.

DECENTRALIZATION AND LIBERTARIANISM

Decentralization in a broader sense represents a process and a status of *decentralizing the power of the state*, and *transferring its authorities* to specific actors on a lower level. The broad term mainly refers to four aspects of it – (a.) *political decentralization*, (b.) *administrative decentralization*, (c.) *fiscal decentralization* and (d.) *market decentralization* (Neven, 2002). Furthermore, it covers three types of decentralization, such as: (a.) *deconcentration*, (b.) *devolution*, and (c.) *delegation* (Yuliani, 2004). The various aspects and types of decentralization, differs in its essence and refers to deferent status in the decline. The administrative decentralization is connected with the phenomenon of *deconcentration*, where the authorities of the central apparatus *deconentrate* its powers and capacities, and correspondingly are transferred to lower level in the bureaucratic hierarchy. The essence and the functions of the state remain in its hierarchy structure, but could be located on a lower level. In that sense, the administrative decentralization and the deconcentration are not regarded as a *substantial decline of the state*, but rather as *improvisatory decline of the state* - transferring of authorities within the state's structure, not to *non-state entities*.

The *political decentralization* and *fiscal decentralization* could be identified with the process of *delegation* and *devolution*, where the state's features are delegated to the *local self-government* organizational structure. In this condition, the decline could be categorized as *semi-substantial decline*, where occurs *de facto* transfer to entity, that is placed out of state's structure, but relies on it as a social relation participator and punishment executor. In the case of *market decentralization*, substantial decline of the state occurs, considering the fact that it *privatizes* and transfers its features to non-state and non-public actors – *private entities*. The market decentralization is narrowly related to the theory of **libertarianism**. Libertarianism represents a *political theory* and *political philosophy* which positions the *individual* as a central actor in the *social relations*; the *individual liberty* as the highest value in its *axiological system* and the *individual consent* as the basic principle for *socio-political organizing* (Ilievski 2015, 9). In the theory of libertarianism, the individual liberty is observed as the opposite principle of violence, or threat with violence - *coercion*. It is violated by practicing *coercion*, and refers to the absence of *coercion*. In addition, the individual is *liberated*, and *free* in the actions he takes, as long as they are not existing *coercive* ones oriented towards him. The *libertarianism* as a theory positions the individual liberty, and the essence of the state – practicing coercion, as *inversely proportional* phenomena. Manifested on political level, it introduces: (a.) *relative decline of the state*, which covers the erosion of state's essence and features, by limiting its functions, appearance as an actor and its role, but also its further limited existence; and (b.) *absolute decline of the state*, which is associated with the total diminishing of it, in its essence, functions and other features.

Table 2: Typology of the decline of the state (Source: Our own depiction)

Decline of the state	Improvisatory		Semi-substantial		Substantial
Transfer	State's entity		Public entity		Private entity
Level	Administrative	Federal	Local	Subnational	Private

Table 3: Results of the decline of the state (Source: Our own depiction)

Improvisatory decline of the state	Semi-substantial decline of the state	Substantial decline of the state
Administrative decentralization	Local self-government	Libertarianism
Federation	International governance	Market decentralization

ALTERNATIVE OF THE STATE

Anarchism and the Process of Decline of the State

The term *anarchism* derives from the Greek language - *anarkhia* (*arhos* meaning rulers and the prefix–*an*, meaning "no" or other form of negation), translated to English - "no rulers" (Online Etymology Dictionary, 2016) and covers various political *theories* and *tendencies* that have a common denominator and foundation – *rejection of the state* (McLaughlin 2007, 25). The idea of establishing and keeping social relations *without state interference* is found in the antic ages, medieval ones, and the most serious attempt – in the ages of *Enlightenment*. The anarchist theories could be distinguished in two major groups, *individualistic anarchism* and *collectivist anarchism*. The major difference regarding the both is the relation they develop towards the institution of *private property*. The collectivist anarchist tradition points that the state is the *guarantor* of the institution, while the individualistic one sees it as a great, *violator* of it (Osterfeld 1986, 51). The *individualistic anarchist tradition* strongly develops on the American soil, while the collectivist one, in Europe. The *scientific anarchism* is identified with the *individualistic* one, and usually is referred as *anarchism*, covering *anarcho-capitalism*, *market-anarchism* and/or *voluntaryism*. The basic idea behind the anarchism is the *abolition of the state* (Osterfeld 1986, 51), manifested in the *absolute decline of the state*. The *absolute decline of the state* embraces the idea of a society and social relations without state's interference and generally without state's existence. In that way, the social institution, present in *almost* whole human history, determined as a *political*

history, does not exist. The process of decline of the state involves the period in which the transfer of the state's features occurs, particularly, the functions of the state. Theoretically, the process involves four phases each of them representing a certain type of modern state, (a.) the first phase represents a *Total state*; (b.) the second one – a *Welfare state*; (c.) third one – a *Night-watchman state*; and (d.) forth one – *Absolute decline of the state*. The actor in the process of decline of the state is identified with the *modern state* – dominantly the nation-state and its modification and variation, while the final stage in the process introduces the absolute decline of the state, in its broadest sense. The starting point and *the first phase* in the process represent the *total state*, embracing the idea of a *state* regulating each aspect of human living, interaction and social relations. Definitely, the state appears as guardian of social order and instrument of social change. It provides *social planning functions*, absorbing *welfare* and *protective* ones, and acts as enhanced norm establisher, with its capacity to regulate each aspect of human living, interaction and social relation. It appears as the dominant social relation participator and the ultimate exclusive punishment executor. The social planning functions politically manifest in the *Total state* (Osterfeld 1986, 88). It is immune to the process of the decline of the state, and correspondingly, no transfer of state's features occurs to state's entities, neither to public or private entities. In the world political history, the best example of state tending to be total state is the *Soviet Union*. *The second phase* in the process of the decline represents the *Welfare state* (Palmer, 2012) or also known as *Sozialstaat* (Morgan 2005, 64) and *Nanny State*, which covers the idea of a state that is limited in its functions, comparing to the total state. It provides welfare functions, operationalized in *educational*, *health* and *retirement services*, plus the core – protection services. It positions itself as a norm establisher, social relation participator and punishment executor, in a narrower scope than the total state. There are a lot of examples of this particular type, such as the states in Europe. *The third phase*, in the process of decline of the state, represents completed *relative decline of the state*. For the purpose of protecting the individual's rights, the state is active solely in the scopes of *internal criminal and justice* and *external action*. Basically it is composed of several state-driven institutions such as *police*, *courts*, *military* and *foreign affairs*. In fact, the political manifestation of the *relative decline* is the *Night-watchman state* (Nozick 1974, 26), or *Rechtstaat* (Morgan 2005, 64), whose only justification is the protection of the individual's rights - preserving the functions of protection, without welfare, or social planning activities. Something similar to this type of minimal state, could be regarded USA in its founding. *The fourth* and last *phase* in the process identifies the *absolute decline of the* state. The decline indicates the absolute transfer of the state's functions, diminishing its essence – practicing *coercion*, its role as a guardian of social order and instrument of social change and its actor appearance as norm establisher, social relation participator and punishment executor, to various *non-state, private entities*.

Chapter 1: The process of decline of the state (Source: Our own depiction)
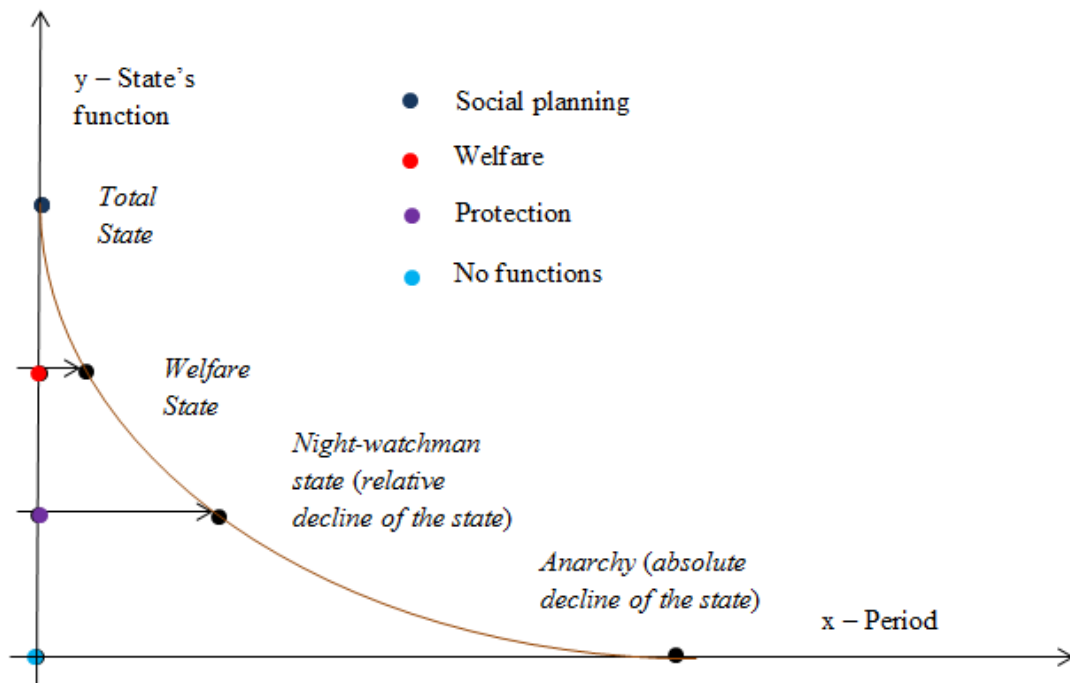
MARKETIZATION AND ALTERNATIVE OF THE STATE

The process of transferring the state's features could be named **marketization**, the method of transfer – **voucherization** or **privatization**, while the manifestation - **anarchy** or **stateless society**. Voucherization describes the process of converting state-benefits programs to a system in which participants are rewarded vouchers with which to purchase privatized services (English Oxford Dictionaries, 2016). Through the process, the state's functions, firstly *de-monopolized*, are divided into *vouchers*, and granted to each individual-citizen. The citizens possess the vouchers, and the right to preserve, sell or put a burden on it. Each sector of state's authority is voucherized, divided into vouchers and granted to the citizens.

With the de-monopolization and voucherization of the state, the one loses its authority to enforce citizen's rights, and potentially could become *one among other private agencies*, providing services (Long and Machan 2008, 161). Accordingly, the state's functions are privatized, transferred to private entities, and its essence diminished. The marketization process refers to a process in which the social relations, subject of state's regulation, convert to regulation of the market – **non-coercive** and **non-centralized regulation**. They are not subject to the *state regulation*, but to the *self-*

regulation, established by the subjects-participants in the relation, based on their *consent – **market regulation***. The process of marketization could be identified with the process of *substantial decline of the state*, where state's authorities are being transferred to private, *voluntary entities*. The privatization covers *private possession* of the state's functions, operating on a voluntary base. In that way, the state and its functions, are *voucherized - privatized*, and correspondingly, divided between the citizens. The *Total state*, through voucherization loses its essence, and narrows its scope, following the process of *decline of the state*. Firstly, it could be potentially transformed into *Welfare state*, by *privatization* of the social planning functions of it. The second one, as a subject of the process, could be also transformed into *Night-watchman state*, by *privatization* of the welfare functions it provides. The *Night-watchmen state* remains the last phase in the process of *relative decline of the state*, preserving solely the protection function. The transformation of the *Night-watchman state*, through *privatization* of the protection function symbolizes the *end of the state* as a social institution, and the last phase in the process of decline of the state. The privatization could be identified as a *method* in the process of *decline of the state*. It means abolishment of the state, and it's no further existence. With it, state's essence – practicing coercion, its functions of providing social planning, welfare, and protective services, its appearance as norm establisher, social relation participator, and punishment executor, its role as guardian of social order and instrument of social change - *are abolished*.

In a stateless society, the functions of the state are transferred to various private agencies, not possessing monopoly on the services they are providing, but rather, appearing on the *market of services*, while the individual is choosing the agency and the services he/she is attaining, potentially and partially using the vouchers received in the process of voucherization. The most problematic and delicate issue, when it comes to the privatization of state's functions is linked to the *protective function* it provides. The main question arising from the issue is if the *final justice* could be placed in *private hands*, and if the agencies could provide protective services. Following the individualist anarchist tradition, the protection function, particularly, *the police*, *the law* and *the court's services* could be provided by private agencies – *protection companies* (Rothbard FNL 2002, 223), *protection entrepreneurs* (Long and Machan 2008, 107), *dominant protective associations* (Nozick 1974, 15), *unions of egoists* (Stirner 1907, 234). The main difference between the state and private agencies is related to its essence – (a.) the agencies are founded on voluntary base, while the state - on coercive one; (b.) the state's scope is *overwhelming*, while, the scope of the agencies is *strict*; (c.) the state could provide all of the mentioned functions, while the agencies are specialized; and (d.) the final difference is related to the efficiency, the agencies as private companies are found more efficient compared to the state. The potential problems arising between individual's subscribing different agency (Nozick 1974, 16) could be solved with a

cooperation of the agencies, establishing a *unique framework* for the problem and evolving of single solution, as a compromise among individuals, following basic justice principles.

Table 4: Comparison between state and protection company (Source: Our own depiction)

Entity	State	Protection agency
Base	Coercive	Voluntary
Regulation	Democracy	Market
Scope	Overwhelming	Strict
Functions	General	Specific
Efficiency	Less efficient	More efficient
Order	Imposed	Spontaneous

The *absolute decline of the state* introduces stateless society - anarchy, in which there would be no existence of *political center* with the authority of decision-making based on the monopoly of coercion; and the previous state's function would be provided by private agencies. In a stateless society, the alternative of the state embraces various private agencies, representing *multiple centers of power* (Osterfeld 1986, 356), each of them providing functions, based on *individual consent*. The functioning of the agencies, generally the agencies are exposed on the *hidden hand of the market*, (Smith, 1997) and could be treated equally with various *private* companies providing services to the individuals.

CONCLUSION

There could be drawn several statements summarized in conclusion, covering the state deconstructed, the process of decline of the state observed, and the perspectives of alternative shown up. Regarding state's origin, are distinguished theories finding it as natural community, social contract, class instrument and *organization of political means* - utilizing coercion in the social relations. Also is described as unique human community practicing and being based on coercion, while it is quasi-legitimized by the objects of it, and justified by *hypothetical consent*. Accordingly it is unique social institution that uses *condign power*, or power of institutionalized violence. Totally deconstructed, it is a *hierarchical structure of individuals* possessing right of practicing coercion, restricted and channelized through general directions. The state could provide several functions, represented in social planning function, welfare function and protective function; is determined as norm establisher, social relation participator and punishment executor and regarding the role it plays in society, as guardian of social

order and instrument of social change. The decline of the state as a *tendency* is manifested as improvisatory, semi-substantial and substantial decline. The improvisatory decline covers the transfer of state's authorities to other entities that are structured within the state's hierarchy – remains the state's structure, such as the decentralization and federalization. The semi-substantial decline of the state embraces the transfer of the state's features to non-state, but public entities, based on the state's role, such as international public governance and decentralization. The substantial decline could be distinguished into relative and absolute decline of the state, covering the transfer of state's function to non-state, private entities.

The alternative of the state introduces stateless society - anarchy, with diminished political center possessing the authority of decision-making, based on the monopoly of coercion. In a stateless society, the alternative of the state embraces various private agencies, representing *multiple centers of power*, each of them providing functions and services, based on an individual consent. The agencies and their activities are exposed to the market - as a primal base and non-coercive regulator, instead of state-regulation. Each individual - through the action he takes, and each agency with the service it provides, participates in the evolving of pure **spontaneous order** and the new era of **no politics**.

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Indexing
Abstracting

NATIONALISM AS AN ESSENTIALLY CONTESTED CONCEPT

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Abstract

Despite the fact that the notion of a state that contains a specific nation is relatively new, most societies tend to perceive their national origins as an indisputable historical fact. This paper tries to understand the reasons that make rational individuals and groups of people believe in the irrational claims of national identities and national pride. As political discourse is the main source of these claims, this paper analyses the nature of that discourse and the way it manages to coin essentially contested concepts that are acceptable by the public. Subsequently, the paper delves into the mechanisms in which the human cognitive apparatus interprets discourse, and the reasons that make it vulnerable to deception. Additionally, the paper revisits notions like nations and states to prove the fact that there is no direct relationship between belonging to a state and feeling national pride. Eventually, the paper tackles the main psychological attributes that interfere to make rational individuals and groups abandon their rationality to believe in purely sentimental political notions.

Keywords: Nation, state, political discourse, nationalism

INTRODUCTION

The fact that political discourse is innately deceptive is more than a subjective claim made by conspiracy theorists or anti-government activists. For many scholars of politics and political discourse, the deception of political discourse can be one of the

strongest state apparatuses. Lasswell (1935), for instance, argues that for the national or international elites to secure their positions and possessions, they need the cultural elites to forge ideologies, symbols and notions in which the public should believe so that the elites' interests can remain safe. In this sense, he gave the example of the notion of "nationalism" that was coined by the French "orators, journalists, poets, novelists, essayists, and systematists" to secure the interests of the bourgeoisie and as "a means of nullifying proletarian challenges from within" (Lasswell 1935, 48-49). Therefore, Lasswell believes that, besides coercion and intimidation, the strength of autocracies and democracies lies in their ability to misinform the public and to convince them that they live in the best possible situation.

This means that besides the suppression or intimidation of the public that can exhaust the elite or threaten their existence on the long term, skillfully coined political concepts can control those publics and eliminate their threat without considerable efforts. In this sense, publics, which believe that living under the authority of a certain state is a matter of choice and a source of pride instead of an imposed exploitation, serve their governments while believing they are serving themselves. Therefore, entrenching a concept like nationalism in the psyche of a state's subjects can be one of the most influential tools of dominance.

Instead of discussing the obvious causes that make states and politicians resort to notions like nationalism, this paper questions the causes that make the public believe or adopt those notions. To answer this question, the first part of this paper mainly reviews the definitions of politics and political discourse and the way they both operate to govern or control publics. The second part delves into the notion of essentially contested concepts and tries to unravel the way these concepts' deceptive nature suits the selective nature of the human cognitive system almost perfectly. Subsequently, the paper delves into the contradictory nature of the concept 'nationalism' before it moves to the discussion of the psychological reasons that make publics refuse facts and accept deceptions.

POLITICS AND POLITICAL DISCOURSE

As essentially contested concepts are mainly political concepts, this section aims at exploring the concepts of politics and political discourse and the way the latter affects individuals and publics. In this sense, politics will be defined as the way governments interfere with and control the lives of the public while political discourse will be defined as one of the most important means of government.

Politics

The first step towards an appropriate definition of political discourse is the definition of the word politics itself. According to the "*Dictionary of Politics and Government*", politics is "the theory and practice of governing a country's local politics or national politics" and "the practice of governing a local area, or of governing a country" (Collin 2004, 183). This definition resonates with the general view of politics as the process of theorization about or involvement with the organized government of the interests of a group of people who share a common territorial belonging. Therefore, whether it is a tribe, a city, a state, a country, or even the agglomeration of many countries, politics is the government of the affairs of these territorial entities and the people who inhabit them.

In this sense, John Hoffman believes that the role that politics plays in the government of certain territorial entities is mainly "the resolution of conflict" (Hoffman 2007, 143). In fact, Hoffman tries to differentiate states from politics by claiming that states can resort either to armed conflicts or to peaceful solutions, while politics never involves the use of force. Therefore, for him, politics "must involve compromise, negotiation and arbitration" while the use of force means the end of politics (Hoffman 2007, 144).

Not everyone shares a clear definition of politics or a clear understanding of where it starts and where it ends. For Paul Chilton and Christina Schäffner, it is hard to attribute politics to certain activities at the expense of others, and the definition of the term can only be a political one that "varies according to one's situation and purposes" (Chilton and Schäffner 2002, 04). In broad terms, politics can be seen as "a struggle for power, between those who seek to assert and maintain their power and those who seek to resist it"; while at a micro-level, it can be seen "as the practices and institutions a society has for resolving clashes of interest" (Chilton and Schäffner 2002, 05). Consequently, politics is either the struggle for power itself, or the tools and practices that are involved in that struggle and that can range from state institutions to the act of political discourse.

Political discourse

As the word politics is too broad to be contained by a single definition, political discourse cannot be expected to be less problematic. The perplexing aspect of the definition of political discourse can be primarily related to the lack of a definite delimitation of political actors themselves. According to Teun Van Dijk, it is not accurate to limit political actors to "the group of people who are being paid for their (political) activities, and who are being elected or appointed (or self-designated) as the central players in the polity" (Van Dijk 1997, 13). The logic behind his argument is that they are

not the only people who affect and are affected by what happens in the political arena. Therefore, the "political activity and the political process also involve people as citizens and voters, people as members of pressure and issue groups, demonstrators and dissidents, and so on" (Van Dijk 1997, 13).

The problematic side of this assumption is in the fact that though political activity includes all these actors, the assumption that all their discourses are political is not very accurate. In other words, although most citizens and all government officials might be considered political actors, they are not always talking about political issues, and their discourse cannot always be referred to as a political discourse. Hence, they can be considered "participants of political discourse only when acting as political actors" (Van Dijk 1997, 14).

In brief, political discourse can be defined as any discourse that is uttered by political actors while they perform a political activity. In this sense, political discourse is "the use of language to do the business of politics and it includes persuasive rhetoric, the use of implied meanings, the use of euphemisms, the exclusion of references to undesirable reality and the use of language to arouse political emotions" (Chilton 2008, 226). This definition captures the mainstream understanding of political discourse as the use of language to arouse certain feelings that might or might not be compatible with reality as it is. As such, the current article focuses on this, rather subjective, definition of political discourse to illustrate the way in which the term nationalism is no more than an elaborate use of language to raise certain feelings that have no logical foundations in reality.

George Orwell, who stresses the deceptive nature of political discourse and the way it is used to mislead the public, provides a more subjective definition. He argues that political language is "designed to make lies sound truthful and murder respectable and to give the appearance of solidity to pure wind" (Orwell 1946, 139). The apparent pessimism through which Orwell perceives political language does not undermine the fact that political discourse can actually be used to justify all forms of states' violence, corruption and human rights violation. The act of killing other people or invading their countries, for instance, is an unjustifiable act; yet, elaborate political discourse can normalize it simply by calling it: 'the elimination of a potential threat, the spread of democracy, or the war on terror'. In brief, it may not be completely subjective to see political discourse as a tool of deception and power assertion.

ESSENTIALLY CONTESTED CONCEPTS

This section mainly aims at illustrating the ways in which essentially contested concepts are framed and the way the human cognitive system approaches them. In other words, this section is about the way in which these concepts are almost perfectly designed to exploit the weaknesses in the human brains discourse interpretation mechanisms.

The deceptive nature of essentially contested concepts

Political discourse has evolved to the extent that it became capable of coining terms that can achieve mass-deception inherently. These essentially contested concepts are generally "appraisive, internally complex and at least initially ambiguous" (Doughty 2014, 06). They are appraisive in the sense that they usually sound like positive comments, no matter what event or reality they describe. And they are complex and ambiguous in the sense that their definitions are usually far from being clear. Concepts like democracy, freedom and justice are examples of essentially contested concept, as they appear positive and clear at first glance, while deeper analysis usually leads to conflicting interpretations. In brief, as Andrew Mason argues "they are concepts whose nature is to be open to endless dispute" (Mason 1993, 47).

These terms are specifically adequate for political discourse due to the fact that it would be a daunting process, for any human being, to reconsider all their possible interpretations whenever they are mentioned. In fact, such an endeavor would make communication itself impossible, as it would block every political discourse at the first uttered concept. In this sense, the only reasonable way in which a human being can process political discourse is a shallow processing, which only absorbs the superficial connotations of its concepts.

The selective nature of the human cognitive system

Thinking about essentially contested concepts would normally make individuals realize their deceptive nature. However, the human cognitive system is mainly wired in a way that prevents it from thinking, even briefly, about such concepts. Our brains:

> Are equipped with a single, general criterion for evaluating interpretations; and ... this criterion is powerful enough to exclude all but a single interpretation, so that having found an interpretation that fits that criterion, the viewer looks no further (Pinar Sanz 2013, 13).

When human beings look at pictures, or listen to speeches, they usually do not stop at every word or every detail to analyze it and reflect on it. If the human brain did that, it would have to take longer periods of time to interpret short speeches or even sentences. For this reason, the human brain processes the received data very quickly, trying to match every new piece of information with an already acquired understanding, and as soon as it succeeds in doing so it moves to the next item.

For this reason, the human brain almost never stops to process familiar concepts, which are usually considered irrelevant. According to the relevance theory, what matters to the human brain, in the process of listening for instance, is new information. In other words, the brain only stops to reflect upon concepts that improve the individual's knowledge of the world or concepts, which alter that knowledge, while the already known concepts are automatically deemed irrelevant (Chilton 2004, 21).

Relating this idea of irrelevance, or of shallow processing, to the fact that essentially contested concepts are both appraisive and confusing clarifies the reasons that make people fail to detect the deception of political discourse. Political concepts are made familiar to the public through repetition, which makes the brain automatically skip them or process them superficially. Furthermore, the confusion and the ambiguity of these terms leave the brain only with the option of selecting one interpretation and discarding all the related debates and discussions that a concept may trigger. Finally, the appraisive nature of these concepts makes the brain retain only the positive emotions or praise that covers the concept's surface, neglecting any embedded negativity.

NATIONALISM AS AN ESSENTIALLY CONTESTED CONCEPT

Nationalism is probably one of the most famous, influential and delusional political concepts ever coined. Unlike democracy, justice and freedom that are mainly appraisive, nationalism is based on a negative premise, or even on obviously contradictory foundations. The first problematic issue with nationalism is the definition of the concept itself. The online dictionary "Merriam Webster" will be used in the following three examples to show the striking similarity between what can be considered contradictions in the interpretation of some concepts. Nationalism is defined as "a feeling that people have of being loyal to and proud of their country, often with the belief that it is better and more important than other countries". From a political perspective, this definition is very appropriate and positive and even solicited in a good public and a good politician as well. However, if we consider the fact that Ethnocentrism is defined as "the attitude that one's own group is superior", and that chauvinism is defined as "the belief that your country, race, etc., is better than any other", we can clearly notice that these terms are similar.

This similarity could not stop politicians from using nationalism as an appraisive concept and from neglecting the fact that it means almost the same thing as chauvinism, ethnocentrism or even racism. However, a deeper consideration of the meaning of the concept may show the fact that it is based on what Orwell labeled "pure wind". It is common sense to believe that nationalism is related to a nation's sense of belonging or loyalty to a certain state. Nonetheless, the definition of the concepts nations and states may be its most concrete flaw.

Nation-states

According to Dankwart A. Rustaw, a nation is "a human group bound together by common solidarity —a group whose members place loyalty to the group as a whole over any conflicting loyalties" (Rustaw 1968, 07). This means that national loyalty should normally be related to the people themselves and not the geographical or political entity that governs them. However, the nation-state, which is politically depicted as the entity towards which loyalty should be directed, is idealistically defined as "the most important large-scale sociopolitical organization that could command the overriding loyalty of groups and individuals and provide the psychological satisfactions of identifying with and serving a common cause" (Handrieder 1968, 530). In this sense, nationalism is based on the premise that countries join the political entity of a state to the cultural entity of a nation in a way that justifies the psychological satisfaction of nationalism.

Despite the fact that this idea of a sovereign state that governs people who belong to the same cultural group seems compatible with the main premise of nationalism, reality proves that most states do not abide by this rule. In this sense, Houghton argues that in the real world "there is often no neat territorial coincidence between 'nations' and 'states'" (Houghton 2009, 168). This means that most states do not build their boundaries on the basis of the cultural affiliations of their citizens. The direct result is that most states either contain a multiplicity of ethnic and cultural affiliations, or force borders that divide some culturally bound collectivities.

Nations and states

The Kurdish nation in the Middle East can serve as one of the most obvious examples in which nationalism proves to be nothing but pure wind. The Kurds, who still believe in their nation's right to form a unified state, find themselves in four different or even conflicting countries. For them, keeping their loyalty within their states' borders means nothing, as those borders separate their nation, and placing their loyalty in their original social group can even be seen as an act of treason (Günes 2009).

Yugoslavia on the other hand is a country that was united under one flag before the fall of the Soviet Union in 1991 (Pesic 1996, 26-27). However, after the Union collapsed, the country was repeatedly divided into smaller countries obliging the people to change their loyalties with every new division. This means that those who were loyal to Yugoslavia, as a nation and as a land, before 1991, found themselves in different countries that expected their loyalty after that year. Yugoslavia was totally dissolved in 1993, while some of the newly formed countries kept expanding and decreasing territories until 2008 (Gligorov 2017, 557). This would oblige the inhabitants of every formed state, no matter how new it was, and no matter how long it might last, to be loyal to it and to be proud of their nationalism. The case of Yugoslavia can be one of the strongest proofs of the fact that neither people nor cultures are taken into consideration in the political drawing of borders. Therefore, the fact that loyalty is supposed to follow whatever divisions the politicians and the army leaders dictate shows the absurdity of the concept and its meaninglessness.

Another example of the extent to which nationalism should be described as pure wind, can be found in countries where even the national political leaders do not decide their countries' borders. A quick look at the map of the Middle East and North Africa shows that, unlike the curvy European borders, these countries' borders were drawn by the ruler of a colonizer, on a desk, somewhere away from the region itself. In fact, the main figures who participated in the division of the region were the British Mark Sykes and the French François Georges Picot, who drew the borders according to their countries' interests (Kramer 2016). The ironic side of this atrocity is that the people whose countries' borders were drawn by their enemies are also proud of their nationalities, are ready to fight for every inch of their borders and want to defend their nations from any lurking enemies, especially the neighboring ones.

As a result of the deceptive nature of a concept like nationalism, borders that were drawn by foreigners decades ago are perceived by the people as permanent historical realities that define them. The people who were divided by the colonizers' pens or pencils managed to see their superiority over the people on the other side of the borders, to see that here is more important than there, and to see the killing of those people to protect these people as a justifiable, if not a noble, act.

THE PSYCHOLOGY BEHIND NATIONALISM

The fact that people manage to ignore all these facts and fall for the rhetoric of political discourse is not simply because of the used language and the human cognitive system. The human psychology plays a major role in this kind of deception, especially when it comes to a concept like nationalism. In this sense, two major psychological traits

of the human psyche interfere in our tendency to overlook facts and to believe in nationalism, and they are both related to group conflicts.

Self-perception

It is common sense to believe that every human being has a tendency to perceive himself in a positive way. No matter what he does or who he is, the idea that he is, at least in one way, better than the others is almost omnipresent in the psyche of every human being. Nevertheless, this positive self-perception can be jeopardized, if the group to which one belongs is depicted negatively. Therefore, individuals tend to perceive the groups to which they belong positively.

In this sense, Marianne Jørgensen and Louise Phillips argue that "in order to feel good about oneself, the individual has to feel good about the group" to which he belongs (Jørgensen and Phillips 2002, 101). This means, that the individual overlooks his group's negativities in the same way in which he overlooks his own negativity, to perceive only the positive. Every citizen, can be proud of his country's development at many levels, and will automatically associate himself with its achievements. However, that same individual will probably distance himself from his country's human rights violations, wars and crimes and will try to blame them on individual exceptions. Consequently, the individual will keep feeling good about his country and keep looking for discourses that boost his positive feelings simply to confirm his delusions about his country and about himself eventually.

Active hatred

A more negative side of this delusion is the exaggeration of the division between 'us' and 'them' to the extent that 'they' should be depicted negatively for 'us' to feel better. As mentioned earlier, feeling good about oneself may lead the individual to feel more important than the other, for different reasons. However, an extreme evolution of that feeling can lead to the emergence of the feeling of hatred towards that less important other. The other in this sense is usually different from the self, politically, culturally, economically, racially, or even geographically. Nonetheless, obvious difference is not always a requirement, as otherness can develop sometimes for the most trivial reasons.

David P. Houghton, for instance, argues that "active hatred can sometimes develop between two [Football] teams ... despite the fact that they are not divided along any evident racial, socioeconomic, religious, or other category" (Houghton 2009, 171).

This proves that the individual may not need elaborate evidence to confirm his superiority or to hate the other, and that these feelings can be easily triggered. As a

result, political discourse may not even need to be elaborate or near elaborate to trigger feelings that the human being is probably always open to experiencing.

CONCLUSION

The main question that the current paper tries to answer is the reason or reasons that make the deception of an essentially contested concept like nationalism possible, despite all the evidence against its validity. On one hand, the first reason is related to the way our cognitive system works. To enable fluent communication, our brains tend to process information that we believe we know in a shallow way. The second reason is related to the nature of essentially contested concepts themselves. These concepts are almost designed specifically to exhaust our brains' capability of finding deep or real meanings, which makes the feasibility of communication achievable only through the superficial processing of political discourse. On the other hand, our public narcissism makes us vulnerable towards discourses that confirm our superiority, at the expense of rationality and facts. This means that, as narcissist creatures, we tend to accept discourses that confirm our narcissism even if that means neglecting all the obvious facts that challenge it.

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Indexing
Abstracting

THE ETHNIC CONFLICTS AND MASS MEDIA

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Abstract

The media have played and continue to play a significant role in many ethnic conflicts and wars that ever took place in history and through its reportage humankind has become informed and aware about ethnic-conflict on the globe through various forms. Irrespective of the increase in knowledge, media has negatively impacted the ethnic conflict by several escalations that took place because of the manner information that was provided. This study investigates what these negative impacts are by examining literature and sorting them to consider media location, outlets and presentation impact of media. An overlapping discovered has gingered the reclassification of the impact of media in the face of dilemmas. They are Psychoanalysis propaganda and profiteering, freedom and ethics, distortion of reality and public safety. The media tries to balance in order to choose the lesser consequential path to survive. However, they have all steered to an escalation of ethnic conflicts.

Keywords: Ethnic conflict, Media, negative impact, social media, mainstream media

INTRODUCTION

At the end of the Cold War, many parts of the world have continued to witness conflicts within their borders. Many new conflicts have begun paralleled to the ones that have ended (Arcan 2013, 338). From the account of these conflicts, the devastated among them ever recorded are the ones in Afghanistan, Angola, Bosnia-Herzegovina,

Myanmar, Indonesia, Rwanda, Syria and Sudan. The new postmodern conflicts have defied governance, regimes and institutions, political authority and the general social fabric of states that have experience conflict more directly than Wars before. The Balkans turmoil in the 1990s represents one of the most ruthless ethnic conflicts in the history of today. The conflict did not only bear upon the former Yugoslav countries but also had a momentous effect on Europe as a whole and the region in particular. The development and security are what the region suffers from since the fall out of armed conflicts and ethnic cleansing. Development issues are met with opposition from the decision making elite who are ethnically divided (Ratner 1995, 158).

In expressing what is evident, 'ethnic conflict' is a dispute about fundamental issues of social, economic, political territorial or cultural between one or more ethnic communities (Peri 2007, 100). It is, however, true that some ethnic conflicts have no evidence of violence or have a tolerable measure. To further the discourse in the context, globalization is mentioned to have an umbilical cord tied to these ethnic conflicts that are violent and nonviolent conflicts in general. Of course, globalization is an ongoing process of development in perpetuity and this progress nonetheless has brought significant effect on the way people live with their neighbors.

The Sociocultural forms of globalization can also be seen in the patterns of how things were done before and now. For example, the way of dressing and language. These have taken at an accelerating rate since the 1970/80s as people became more aware and more informed through one significant source; the media. If awareness about the existence of such a process is key to the globalization, then, the "magic" of media has globalized almost every individual in the world even when they are constrained by the migration policies. It can be said that Media is a significant tool for political development, economic reinvigoration and cultural integration. It simply reflects that Media is a tool that can be used to perpetrate any kind of change that will bring about actions within a society (Pollis 2007, 60).

In light of this, media has been called the fourth estate of the realm or regarded as the fourth power after the other recognized governmental powers such as the executive, legislative and judiciary. This simply means that the contributions of media towards democratizing processes of states are unparalleled. Example of such instances includes the independence of the media with regard to election processes and other issues regarding governance.

In an ethnically factionalize society, the role of media as the independent fourth estate is challenged with the concept; the Fifth Column. Such description is used to reflect the harm that media can bring to states, governments, groups and individuals. Governments argued that media undermines its role by bringing everything to the public and not giving time for the gradual process of adaptation of the citizens to what is happening in government. It analyses bring different opinion that can get the people

to start an uprising. While citizens also perceive media in a way that it promotes the government dealings by not providing sufficient information of what the picture of governance is about (Schultz 1998, 80).

The XXI century is witnessing an eruption of Internet-based messages transmitted through these media through an array of platforms referred to it as social media. They have become a major factor in influencing almost everything from consumer behavior, environmental, politics and conflicts. Social media denotes the propagation of information via a digital medium that is interactive, integrated two-way communication and encompass some form of computing (Michaelsen 2011, 12). Again media is the concurrent generation of news and information with it free-for-all content. Examples, which are not far-fetched including Twitter, Facebook, blogs, YouTube, etc. This aspect of information dissemination has revolutionized the mainstream media news dissemination today. Twitter and Facebook have particularly stood out as the most powerful media because of their micro-blogging nature and power. Due to their acceptance, flexibility and quick dissemination and sharing of information, Twitter and Facebook have emerged as a key media for news and information on major events around the world (Mangold and Faulds 2009, 360).

Due to their popularity, they are used for political communications, marketing, promotions and advocacy. Apart from its positive usage, social media have nonetheless been abused for ethnic hatred; a usage that has heightened ethnic tensions, and sometimes has threatened to plunge countries into ethnic conflict especially Kenya and the rest of them and is far catching up with institutions such as government and media (Ndonye 2014, 437). It suffices to say that ethnic aligning is a threat to peace journalism which has objectivity, circumspection and balanced coverage of events as its pillars. The arguments are that while social media is seen as a pivotal in many significant well-known uprisings in recent times it is believed that it cannot stand the test of time. The assumptions are that authoritarian regimes have learned the lessons and measures including censorships and blocking social media by leaders in some countries (Shirky 2011, 39). This paper argues that mainstream media remains the key stream through which ethnic conflicts are mostly propagated in the course of the conflict and therefore has a negative impact such as making peaceful resolution take time.

In the context of fractionalizing society, the role of media has been questioned; does it promote peace or it is a catalyst for ethnic conflict and civil conflict? This article focuses on this question in the context of old ethnic conflicts. Several pieces of literature have focused on the negative presentation of media as a propaganda tool in many different ethnic conflicts however; they have not acknowledged the disparities in the types of media, location and style of presentation. Acknowledging this disparity would enable this study to craft a model on how media can promote peace. This paper classifies available literature into these three (3) categories of media.

It furthers the study by examining the modern context of media with reference to social media. This significance of the study is to show that the expansion of social media (niche media) has not undermined the role of mainstream media in instigating ethnic conflict and the censoring of social media limits its capability to be a tool in promoting democratic peace or contributing to conflict resolution. Therefore, the conclusion of the matter is that mainstream media remains a key sector that has a negative impact on ethnic conflicts by reflecting the points where mainstream media has infected the negotiation process.

This study was carried out using secondary data. Most of the secondary data are historical data occurring within the past thirty years. This is because ethnic conflicts have been on the increase in this period. Also, it is linked to global events like the dissolution of Soviet, the rise of the use of the internet with regard to social media. The interpretative measure has been employed in this study to provide and reshape the perception of negative media impact. Random ethnic conflicts have been chosen from within three regions that have been regarded as most ethnically diverse; Africa, Europe and the Middle East. The way in which the cases are used is in the manner they reoccurred in subsequent headlines time after time as they relate to. Therefore one ethnic conflict can have characteristics of media in its different shape and forms thereby keep reoccurring.

Literature Review

There is diverse literature that reflects the roles that media plays in ethnic conflict. Interestingly, none has put together the cognizance of different shape depending on media *location (domestic and international)*, *outlets (mainstream and niche) and the presentation format (audio and pictures)* as having a link to the way in which ethnic conflict promoted. Secondly, none has emphasized or put into considering the role of social media as a form of niche media. Although there has been a possibility of alternative such as social media, yet trust for the mainstream remains comparatively above the trust for social media which is full of unreliable and unverifiable information. Also mainstream media like TV, radio and newspapers are being partisan in most ethnic conflicts because of survivability in such period. Therefore it brings about both survivability and commodification that leads to provocation and escalation.

International vs. Domestic Media Approach

Some scholars focused their literature on the role of national media and international media. The domestic media portrays ethnic in conflicting positions on different media outlets, and this contributed to the continuation of ethnic conflict.

The development of the media in Yugoslavia preceding its separation reveals the manner by which evidently 'national' media establishments are divided along the ethnic lines. Yugoslav TV, situated in Belgrade, turned out to be more interested in Serb issues in their broadcast. They present emotional pictures of the ancient Serb Motherland in Kosovo, while Radio Yugoslavia started to become an expository medium of leaking Croatian point of view (Mostov 2000, 89). These advancements were an impression of changes in the general public, however, in the meantime bolstered into the developing ethnic divisions by giving a medium around which domestic 'patriots' could rally. This leads to the discussion of nationalist local media deviating from the objective standards that journalism should follow. Such nationalist presentation has been portrayed as objective information by making nationalist activities the norm of their broadcast. This simply reflects how they become politicized (Allen 1995, 16).

There have been various research on the domestic and international activities of news media in Bosnia, Croatia, Serbia and Kosovo during the civil wars. Additionally, it is present that media offers an intriguing review of how Balkan movie producers built their own perceptive and talk about the locale through to the 1990s, albeit unfortunately the appropriation of huge numbers of these movies has been limited, since there none in it slightest in sub-titled forms. It shows how they such locale media promote a distorted story about what went on in the civil conflict. It is probable that the intention of not placing subtitles is to make the locals hold on to what is presented to them as the objective truth since it will be no easy task for an external media to challenge what is being fed in the domestic area. It almost spread across borders however the attachment or reception such information has is limited to those interested in the region (Iordanova 2001, 6).

The international arena is not a nation in itself that should have nationalist media but it also promotes certain version and idea. For example, New York Times Magazine, which vulgarly compared on one side a narrative photo of a withering youngster, with that of an advert for gold adornments, contended that sadness and pain had progressed toward becoming products. He recommended that as the more settled help organizations like Oxfam and Save the Children had turned out to be more self-basic and considered in their utilization of symbolism, this had made them less certain - even of their motivations. Thusly, more up to date, brasher, less delicate offices were set up to use any picture however savage that could raise support successfully (Olzak and West 1991, 461). Therefore it is argued that NGOs, photojournalists, the entire charity association had moved toward becoming, as a result, intensely coordinated into an arrangement of commodification. In a related contention, both the disturbing good self-respect that pictures far-off brutality appear to create in the global group and the issue of how to utilize, deliberately or productively, open feelings prepared by loathsome pictures (Allen 1999, 105).

In this view of change, domestic role of the media in a chaotic feature resides not in basic ethnic difference or propagations, but rather in the economic issues of homelessness and joblessness portrayed by media. The media in Kenya, again, was concentrating on the critical intelligent part of the medium and its part in fuelling ethnic divisions. Kenyan President's depiction of calls for political change in the late 1980s as an indication of the aspirations of the Kikuyu individuals and the condition of his political party and tribal tendencies enabled him for a long time to oppose calls for political change (Kilonzo 2009, 245). This strategy, of 'talking tribalism', implied that, when ethnic-centered conflicts began at the end of the cold war, they were effortlessly comprehended, both locally and internationally as an ethnic clash, and accordingly the more profound reasons for the conflict which is linked to assets did not receive attention (Khaende 2013, 13).

News editors became prone to hone self-restriction, regardless of whether through dread or from political aspiration and conflict zones can be closed from the international media, therefore avoiding the necessary level of efficient media coverage. Therefore as an alternative to media issue of bloodshed and savagery talked about in the literature, the fundamental reasons for struggle can be found in the issues of destitution, joblessness and limited opportunities, especially among young fellows. Ethnicity can turn into a reviving point for such disappointments, and ancestral histories and characters are developed and recreated to fortify the will for political activity (Masselos 1994, 80).

Like Rwanda, the well-known unconstrained 'ethnic' or religious conflicts of the Bombay Riots in the late 1993 and early 1994 have been appeared to have been deliberately organized by political gatherings, with most of the members made up of uneducated youngsters who reside in the cities. This appeared to be odd, in light of the fact that the primary understanding was that the Rwandan catastrophe was more to do with political intrigues than ethnic centrality and some programs were structured to address ethnic-centeredness. An intriguing discourse about the inclination for journalists to turn to ethnic clarifications as per normal procedure in covering conflicts in Africa because it is a society that is high in ethnic diversity (Masselos 1994, 79).

However, one point is crucial, the beginning, in particular, the lifespan of media which had reflected and fortified the partisan isolated instructive framework and political structure of the region (Jewkes 2015, 24). For example The Belfast Newsletter, mirroring the forceful assurance of Protestant Loyalists never to be gulped up by the South, had been established in 1737; the Belfast Telegraph, established in 1870, is acquainted with the higher class, openly less harsh fraction of the Loyalist people group; and the Irish News, established in 1891, voiced the desire for reunification regularly among Catholics,

not minimum since it would free them of the fundamental segregation they lived under (Hill 2006). This is a way to deal with the part of media in the Northern Irish circumstance from literature which concentrates exclusively on negative shared generalizations and their media challenge. It is stressed the vital authentic part of divided media in Northern Ireland. However without input that has a tendency to solve the conflict significantly by depending on a credible independent source with inventive media scope would after some time diminish individuals' feelings of trepidation and threats that breed negative perception. The actors engaged with Northern Ireland were not only 'the two groups' and 'the media'. The British state, specifically, was a colossally huge media character, as to a lesser degree were the US and Irish governments. Hence including the two powerful states and universal media parts in the investigation of the media is necessary. The British state's enthusiasm for the region was fairly reliably perused in English and global media as that of keeping the peace and keeping up rule of law, despite discontinuous 'mistakes', 'overcompensations' and 'disastrous outcomes'. The main emphasis is that it declined to lose legitimacy by enabling itself to be seen globally as having been pushed out of its legitimate region, was only on the media once in a long while on the media plan. Besides, particularly in England itself, which obviously had an immense impact on the outcome of circumstance, efforts by TV and different columnists to open up the issue for public verbal confrontation were reliably deferred and jeopardize with blockages (Schlesinger 1987, 205).

Another negativity a foreign media brings is presented by Styan's studies. It focused attention on the economic and organizational realities of journalism that explain the insensitivity and paucity of reporting from many of the areas of ethnic conflict. Thus the foreign media operating to report other locations, if it took material at all, received news from poorly trained young, insecure, badly-paid journalists, who often covered immense territories on a free-lance basis.

Local journalists rarely got any access to the foreign, opinion-forming media, and the transition from print to electronic media had only made the matter worse as the foreign still expects to see broadcast stories put together and commented on by a white reporter from the West as an example. Not only are Western images all thus refracted through the perception of marginal Western outsiders; even worse, local media often take their views from the West as well - because it is cheaper. For example, people in the Horn of Africa get their news from external, usually western media sources. One recent Reuter initiative to fund an African news agency had run into problems over issues of editorial control; nevertheless, it is argued, the emergence of strong, respected local news production was a vital precondition for more accurate information (Allen 1995, 17; Bourgault 1995, 112).

Mainstream and Niche Media

The literature presents to us once again another means by which it classifies media and this is mirrored through the way it operated. Mainstream media are the conventional means of receiving news whose primary aim and focus is to feed the people with what is going on that they need to know. Meanwhile, the niche is a social media such as blogs and other personally run internet pages that produce news as an alternative to mainstream media. The literature on local and international media focused majorly on the mainstream type of media because the niche media are internationalized by their existence on the internet (Wilkins 1998, 32). Therefore the next literature proceeds to social media and conflict.

Web-based social networking devices cannot be acknowledged without being put inside the set of media culture in the Arab world. In the course of the last decade, the Arab area has encountered the most noteworthy rates of technology reception as they welcome social media. The use of internet usage in the Arab region has created the conflicts and complex connection between media and governments. In the absence of truly autonomous reflection of media, disappointed individuals have pursued an alternative means that will promote their involvement in the political discourse of their state (Skinner 2011, 3). The utilization of online social networks, for example, Internet and cell phones have empowered the "silent majority" who have silenced by either persecution or absence of good administration, to rise up for their rights. Minimizing socialization through social media censoring can be considered as an underlying driver of an uprising that leads to conflict. The silent faction could be an ethnic group whose coordination through social media is necessary (Gire 2014, 5).

On the other hand, to an extent, studies reflect that social media is a capable apparatus that could be utilized to control conflict and it could likewise instigate conflict. For example, discourses that relate to hating speech as an example that promotes ethnic hatred. In some societies, ethnic hatred is caused by either tribalism, history of non-peaceful coexistence and in the case of Kenya; it is political rivalry and historical injustices (Blunn and Krieger 2009, 44). In most cases, ethnic conflicts come about as a result of nationalism and a sense of national advantage within a certain ethnic group. The case of Kenya, Rohingya and others are some examples of ethnic conflicts caused by social media platforms. It is momentous that online platforms get to have a great deal of impact on the conflict management because war is made from all its content and for all intents and purposes on this stage. The mainstream press is therefore tasked with the test of broadcasting more accurate news with regard to such war discourses but often failed in the mandate. Media, in general, is a two-directional as a sword that could work either to advance peace or jeopardize the hope for conflict resolution (Khaende 2013, 3).

Other relevant works with regard to mainstream media communications and violence have indicated proof on how radio and TV can promote or discourage ethnic violence (Huesmann 2007, S7). Monitors of propaganda reveal public radio in Africa have featured the potential perils of ethnic strife and savagery (Livingston 2011, 591). Going past subjective records, Yanagizawa utilizes information on radio accessed in Rwandan towns to archive the impacts of "despise radio" on killings amongst Hutu and Tutsi amid the genocide. Here, the utilization of broad communications by one clash group moved and opened recognition as well as encouraged fierce aggregate activity towards the other. The two parties utilized the role of mainstream media communications in making shared proclamations about the other ethnic groups as a foe and the sharing of the other ethnic groups' secret information to demoralize them. This can encourage or frustrate even the minimal activity and coordination towards a peaceful resolution (Yanagizawa 2014, 1998).

The development of intra-group ethnic communication is going to encourage shared convictions to act in certain ways since the common values and norms have been created. Also attendance to online platforms, along these ethnic lines giving one channel of facilitating collective action (Shirky 2008, 41). The higher rate of correspondence between individual to individuals members additionally makes the transmission of messages and guidelines from disseminators through this kind of decentralized system more productive. This reflects that collective action is fundamentally subject to the mass union (Peterson 2012, 78). In sum, the spread of individual communication innovation such as social media to the overall public is replacing mainstream media (Kuran 1991, 10).

Presentation Formats (Images and Audio)

In the presentation format, the utilization of intense pictures by fundamentalist both in the formal media and through informal channels, for example, a notice poster or handbill that is hostile to abortionists because it is declared as squandering the life of a Croat could start an ethnic conflict (Lohmann 1994, 42). In ex-Yugoslavia, Patriotic images were controlled by government officials through the media to impel ethnic divisions and the ascent of fundamentalism would thus be able to be graphed and fully understood through an examination of the media (Allen 1995, 18). Another example is the critical part of the informal media where pictures are used in advancing Hindu fundamentalism and religious divisions in India. Cases of effective poster pictures of Mother India, or 'Bharat Mata', with her arms cut off on either side by Muslims in Pakistan and Bangladesh, while the dissemination of shoddy tapes by fanatic political gatherings including the prohibited BJP (Bhartiya Janata Party) is used to spread hostility to Muslim feeling among Hindu people group and vice versa. The casual media has

turned into a key instrument of fundamentalist gatherings either religion or ethnic, giving a compelling channel to the poor and rural areas of the country. Image publication in a poster form is supplied in large quantity to such shanty territories, while pilfered tapes are generally accessible to poor people. The increase of radical Hindu gatherings as of late has been contrasted with the advance of National Socialism in Germany in the 1930s, with the utilization from one perspective of pursuing nationalism and patriotism, as symbolized by the Bharat Mata symbolism, to stir pride and desire among hindered gatherings and then again, in the strategies used to excite racial and religious contempt (Allen 1995, 18).

Similarly, in Myanmar, groups' information, attitudes and practices in connection to ethnopolitical clash are a result of government control of the information framework. The emergence of Bamar majority's dialect and cultural ways were previously a state agenda and policy, as portrayed in the institutional framework of state agencies, including the state-run media. The military government adapted it to create fear and shield ethnic secession from the State. In the expressions of Ethnic nationalities, they have since wanted a political exchange process in which their authentic grievances can be broadcast and underlying drivers of contention with the state settled (Dolan and Gray 2014, 16).

In addition, films are yet another provocative means of the media presentation. Films conveyed much that was subtle, disturbing and yet imaginative about the war in Bosnia and the eyes of the journalists through which we see and understand what is happening. In contrast, The Bloody Tricolor was found to be a much more conventional piece of investigative journalism. It also drew attention to important differences in the way wars are presented and perceived in France and the UK but it was much more overtly critical of the French. Indeed the film was essentially an attack on French activities in Rwanda which suggested that the French Government was at least partly responsible for the terrible genocide of 1994 although views of the film were still mixed. It was pointed out that the start was very simplistic presenting Rwanda as a mysterious country in which two tribes with similar ancestry had long struggled for dominance (Kalyvas and Kocher 2007, 178).

Crimes and Media

Although there is an established connection between media and ethnic conflict there are other links such as violence and criminality that take attention of media since savagery and death sometimes are commoditized. The motivation for engaging in criminal activity and being part of an ethnic group also shape the direction to the analysis of ethnic conflict. Some ethnic groups could be seen as prone to engage in violence and crime. The way in which media portrays such act of violence being

perpetrated by one particular ethnic group becomes normalize that every member of such a stigmatized ethnic group does not mind resorting to violence and crime (Callanan 2012, 100). An example is the Hausa-Fulani herdsmen who continue to kill people in Benue State in Nigeria (BBC 2018). Another example could be seen in the case of the African Americans in the way the media portrays their image have a downcast significant number of their youth perceiving crime as worthwhile without blinking an eye. This is applicable to ethnic conflict zones where the media is dominated by a particular privileged ethnic group. This is media instigated violence that ends up in utilizing the conflict as the behavior and attitude of the ethnic groups affected (Downing and Husband 2005, 11). Also, this media instigated crimes are seen through the movie industry that depicts one ethnic group to be weaker than the other or less advantageous than the other resulting in a security dilemma on an ethnic level (Reiner 2002, 385).

Social Media Potentiality in Ethnic Conflict

This section checks the arguments of this study and proofs it beyond any shred of doubt that mainstream media is still the most influential type of media with regard to playing a negative role. Therefore this part examines the possibility of social media's possible contribution to ethnic conflict considering its role in the Arab spring as a conflict or revolt and why citizens resort to social media.

The paper crosses over to Tunisia where social media has been perceived to have helped support the uprising in significant perspectives. Tunisia has been for quite some time known for its persecution of predominant mainstream media. It proceeded with oppression and control of any reactions particularly originating from bloggers and writers, more likely than not, left individuals with no other decision than to revolt. Any publication or social media website which involved the depiction of the administration as corrupt is promptly blocked. Some sites have also been hacked into by governments, for instance in Turkey, China and Pakistan among others (Bamman et al. 2012, 2).

Egypt nonetheless had a similar experience. Online networking bolstered by social media was helpful for propagating, news gathering, association and coordination with dissenter gatherings and people taking photos with cell phones and satellite TV for worldwide broadcast of the entire scenario (Lim 2012, 240). Social media filled the void as a substitute for mainstream media which was not useful at all as it was entirely state-controlled. Along these lines, Arab and International groups of onlookers could relate more about the occasions through Social Media than the conventional one. Facebook and Twitter's post highlights how different factions and groups meet to get ready for the most proficient method to curtail government powers for example what to do in a case of tear gas assaults. At the point when the Egyptian government hindered the

internet and the telecommunication frameworks in early 2011, numerous human rights associations and world governments reacted to this act of cutting Egypt away from the global world or vice versa. Such positive impact of online networking is only found in Egypt and Tunisia with regards to Arab spring (Eltantawy and Wiest 2011, 18).

Other states have not had a similar positive impact. Protesters in Libya, Yemen, Syria, Bahrain and other people who took after the way of Egypt and Tunisia additionally had governments who without a doubt took after their experience and took preventive measures as far as online networking and its energy. For instance, the Libyan government removed the internet access just as in early 2011 the Egyptian government also blocked the protesters' coordination and development. This thus made individual protesters feel more limited and less motivation to push. Such areas have shockingly encountered the negative effect of usage of online social media networking wherein by the day's end; the legislature can undoubtedly mediate with it (Faris 2013, 162-163).

CONCLUSION

The findings of this study are divided into subsections according to the observable characteristic that reoccurred as a trend in the literature. The subsections are; Psychoanalysis and Profiteering, Freedom and Ethics and Distortion for peace and public security. This study discovers that media is clouded with the dilemma of choosing between these two points of which the other produces the negative impact on the conflict or the other. It simply means that if a media focuses on psychoanalysis than profiteering there is negative impact that takes place while picking one side.

Psychoanalysis propaganda and Profiteering, it is discovered that whether international media or domestic media they are confronted with this choice of raising the morale of the ethnic groups in charge of the media or making a profit by presenting a form of savagery, irresponsible reportage irrespective of which ethnic group is being portrayed. Psychological presentation to raise the morale of their ethnic group and demean others might not raise profit if the other ethnic group has a more sellable picture to the wider public. This is because media has raised the appetite of the wider public about the horrors of ethnic conflicts to make money from savagery.

Freedom and Ethics, the opportunity to express oneself is being confronted with the issue of ethics especially on niche media. Mainstream media has limited ethical issues compared to what is put online. To what level can social media presentation of Hate speech and abuse escalate ethnic conflict remains questionable? This study argues that since a government can confidently argue that they would censor social media, ethnic groups would be more careful to avoid the total blockage of their source of interaction. Social media has been seen as an alternative to mainstream media in the event when the mainstream media has pursued rational psychoanalysis or profiteering

or taken over by government propaganda and has become adulterated. The social media serves a role, however, without censoring of the mainstream media or being adulterated, the social media remains a playground of information. The amount of information makes those who use social media more skeptical as compared to mainstream media. Thus, the trust level for social media fluctuates a great deal with regard to the subject of censorship from the government.

Distortion of Peace and Public Safety, the media has been seen as a sector that contributes to democracy. The negative impact with regard to this is when the media house omits or commits a deviation by withholding some information from the people. This could have an impact on the public security. However, whatever information is to be released must consider its effect on national security. Democracy has preached the gospel of freedom of the press, yet in cases of peaceful resolution, the media has reshaped the histories and that becomes more complex. The mainstream media has the largest amount of reliable and verifiable information as most actors allow their presence in their camps to take coverage of activities. However, what they release to the public is subjective as it could favor one ethnic group against the other.

From the foregoing, ethnic conflicts have escalated due to many explained factors through this study which mainstream media is a major stake. The reason for the study is considered the new trends of media that need to be acknowledged and compared to the mainstream media regardless of its negative impact as published, read, seen and experienced. Notwithstanding the entire dilemma and the negative sides, mainstream media is pitched higher because is it not as diversional, insightful and rumor mongered in comparison to social media. Its potential to broker peace cannot be overemphasized.

As it is evident from the findings, the hypothesis being congruent with the work. It was clear from the work that both local and foreign media face the issue of praise singing and it is found to do so as a result of the gains thereof. It is seen in the findings that, social media is patronized due to an adulteration of news items from the mainstream but the trust issues are another ball game for social media. The democratic consolidation role of the media was undoubtedly visible in the work. Indeed, if democracy must strife, society must have access to information and to discuss the status quo. However, the ability to cause havoc was visible and to remind ourselves, conflict does not happen out of the blue but incline to have a historical background. In this regard, the local media is noted to have a better understanding of existing political structures. In all of the downside of media, it has not been left out in the business of continuous coverage of events due to the fact that their services to humankind and country are validation in itself. Considering the power media wields, the world would be a better place to live in if players and actors will be circumspect, many of the conflicts, though it will occur the effects would be pretty minimal and the role and duties as

ascribed to media as the fourth estate of the realm will be more consolidated and carnage of war will be exterminated. Nevertheless, the potential of media in conflict and out of conflict conditions remains a net positive and has been underused from time immemorial till our contemporary time.

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Indexing
Abstracting

THE NARRATIVE OF POLITICAL ISLAM: CONSTITUTIONALISM AND HUMAN RIGHTS

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Abstract

One of the essential postulates of political orientation and determination for the building of stable societies and a functioning political system in its content recognizes and imposes the need to examine the relation of relevant political actors to constitutionalism and human rights as concepts and preoccupations for any modern society. Also, constitutionalism and human rights and freedoms as its inseparable category manifest the political values and the corpus of essential and common political goals and commitments of a particular political community. Political Islam as an ideological political subject has its own sources and a valuable orientation framework through which prisms and perceptions can be interpreted or extracted by individual axiological determinants to certain issues. This paper analyzes exactly the relations of political Islam with constitutionalism and human rights, and similarly to the so-called framework it draws attention to the concepts of power, the mechanisms of control and compliance with the Sharia regulations. At the same time, the importance of human rights and freedoms in the Islamic narrative, their nature and scope, as well as the differences with the western established documents in this area are emphasized and analyzed.

Keywords: Political Islam, Constitutionalism, Sharia law, Human rights, Islamic government

INTRODUCTION

Constitutionalism has significant dimension for Western political and legal thought above all in terms of guaranteeing human rights and freedoms and limitation of power. Certain principles expressed through the state constitution, understood as a social contract, are emphasized by western thinkers as an essential necessity for developing a stable and democratic society. On the other hand, often Muslim societies and political Islam as an entity are referred to as a zone in which human rights and freedoms are massively violated, and existing constitutions are only the decor of authoritarian regimes. Nathan Brown rightly notes that in the Arab and Muslim world constituent assemblies have been elected and constitutions written, often growing more fulsome in their espousal of ideological principles even as they have increasingly failed to provide for genuine accountability. This pattern led to an increase cynicism about constitutions generally, leading most scholars and political analysts away from constitutional analysis for many years (Brown 2007, 47-48).

In this paper, at the theoretical level, will be set out some essential parameters that should captures the positions of political Islam in terms of constitutionalism and human rights review. First, what constitutes constitutionalism in contemporary Muslim societies and how is it experienced by Islamic political subjects? Similarly, how are Islamic perspectives identified in terms of power and the principle of separation of powers, as well as mutual checks and balances. More important is the nature of the legislative power and its correlation with Sharia law as an initial form of social and political behavior in the Islamic discourse. Also, logically and contextually the question arises as to what is the attitude of the Islamic political value corpus to the concept of human rights and freedoms? Where are the sources of human rights and freedoms in the Islamic narrative determined and whether exist adequate codification internationally and what kind of character are they?

Before we start with the theoretical and empirical elaboration of these questions, it must be put in place a methodological note. First of all, will be take into account the views of the Islamic scholars (Ulama) in contemporary Islamic political thought, since they are basically the largest articulators of Islamic political doctrine; Second, strategic documents related to such postures will be exposed as credible in terms of understanding the concepts that are the subject of this section; Thirdly, we will not go into extensive elaborations and historiography of the concept of constitutionalism and human rights and freedoms as well as their development, because our intention here is to see only the Islamic political positions on this issue; And finally, it will be contextually consider some of the Islamic political activists with their view of such issues.

CONSTITUTIONALISM THROUGH THE PRISM OF POLITICAL ISLAM

Constitutionalism in the narrow sense of the word is a practice of limited power secured by the existence of a constitution. Heywood argues that in that sense it can be said that there is constitutionalism when the institutions of government and political processes are successfully constrained by constitutional rules. While constitutionalism is broadly meaningful, it is a set of political values and aspirations that reflects the desire to protect freedom by establishing internal and external checks of power over government (Hejvud, 2009, 339). As a working paradigm here we will accept the definition, i.e. the description of Jan - Erik Lane, who notes that for ideas of constitutionalism two ideas are basic: a) Restriction of the state against society in the form of respect for the set of human rights and freedoms, which contain not only civil, but also political and economic; and b) Implementation of the separation of power in the state (Lane 1996, 25).

The Authority Issue

There is a neceserity to focus on the debates about authority, or power, but we should first mention one essential predispositions. Bejtula Demiri rightfully observes and laconicly affirms these positions, saying that there are two kinds of perceptions about the relationship between Islam and the state, and consequently the state constitution: the first is traditionalistic, which implies rooted in the desire to restore the Islamic past, that is, the restoration of the city - Medina, as an ideal form in Islam, and the second, is a reformist one that calls for the reconstruction of the state constitution through the reform of Islamic thought, but its advocates are against uncritical acceptance of Western values in the state order. But what is a determining remark to Demiri's claims is his position that the state constitution in Islam does not have a unique form, because it is acceptable to claim that the ideal form of arrangement was achieved during the Four "Rightly Guided" caliphs (Rashidun Caliphate) (Demiri 2009, 67-68). Such a conclusion would be acceptable if we exempt the Shia Islamic subjects, but the intention of our work is to present a comprehensive approach to this issue, and hence we would notice that the idealized momentum is required during the Prophet, as well as the Sunni and Ali's caliphs for the Sunni and the rest of Ali imams in the Shiites.

Though initially circulated the thesis that the ruler is a kind of "Goddess of the earth" (of course, the ulema has flown through different eras with the rulers), the modern discourse takes a completely different dimension. As Gudrun Kramer notes, it is generally accepted that the "ruler" (Imam, Caliph or President) is nothing more than a representative of the "ummah" (Islamic community), from whom his authority arises. In contemporary context, it is stated that all of his power stems from the Islamic

community (ummah), which represents a radical departure from medieval political thought. Modern Sunnis engraved a different picture: Like every human being, the Islamic head of state is accountable to God, but he also responds to the community (which is modernly called a peoples or nation, allowing the possibility that both the Muslims and the "unbelievers" will be involved in such processes) (Kramer 2011, 91). The most prominent evidence of such conditions today can also be found in the statement of the representatives of the Egyptian "Muslim Brotherhood" who oppose the then-regime of Mubarak, consider the ummah as a source of power, and request for a new constitution that protects human rights and freedoms compliance with the Islamic Declaration, free and fair elections, limited presidential mandate, and the rotation of power through the "plurality of parties in the Muslim society" (The Muslim Brotherhood Statement 1998, 101).

Sharia Framework and Limitation of Power

Islamic constitutionalism is undoubtedly based on Sharia, as well as the obligation of the Islamic government is to respect Sharia laws and norms, to ensure their full implementation and codification in the existing orders of Muslim societies. Islamic political activists such as Hassan Al-Turabi and Syed Abul A'la Maududi see Sharia as an Islamic constitution, or an entire system that contains constitutive norms for the Islamic artist. For example, Mududi believes that "unwritten Islamic constitution" already exists and its codification is expected on the basis of relevant sources identical to Sharia (Maududi 1975, 35), while Hassan Al-Turabi believes that Sharia is a higher law, just like the constitution, except that he is a detailed Constitution (Turabi 1993, 4). Islamic expert Muhammad Asad, in his work "Principles of State and Government in Islam," proceeds to systematize the elemental forms of the Islamic constitution: a) There is no specific form of an Islamic state; b) The main task of the Islamic state is the implementation of Sharia; c) No law should be in a collision with Sharia; d) The authority which rests on consent is the most important precondition for the Islamic state; e) An Islamic state can not exist without distinction between Muslims and non-Muslims; f) The principle of shura (counseling) means the widest possible electorate; g) The majority model is most suitable for solving differences in opinion; h) The decisions of the Majlis-Shura (parliament for counseling) are legally binding for the citizens and the executive; i) It is not unislamic to creates political parties that will compete with each other, bearing in mind that the differences in the mind's thinking may be God's blessing; j) A presidential system like the United States would be more interconnected to the needs of an Islamic political society than British parliamentarism; (i) The Supreme Court and the judges (qadi) shall be the protectors of Sharia (Asad 1961, 56-66).

The principle of power-sharing creates serious confusion for Islamic political thought and Islamic political activism. There is almost no significant notification in the sources of Islamic political thought that would confirm this principle, so the issue of reinterpretation and ijtihad would be primarily present in the narrative on this issue. Also, as Kramer notes, in the political institutions and procedures, western model influence is also evident, which includes the representativeness and power of the majority, the separation of powers and the independent judiciary. The adoption and adapting of such principles are justified and "Islamized" in the context of the Qur'an and the Sunnah (Kramer 2011, 91).

Primarily, the question here is about the role of the legislature and the relationship with the executive, as well as their nature. Islamic theorist Azizah al-Hibri perceived the constitutional construction through the principle of a) popular will as a basis for power; and b) the principle of power sharing, argues several essential features: The first principle in itself contains two aspects: First, the people's choice of the ruler, according to Al-Hibri, happened to the Bay'ah (the covenant) that was sent to the Prophet, through which he was "chosen" as the leader of the Muslims, as well as to other Rashidun Caliphs. Second, the people's election or confirmation of the Constitution, which in the present case is the Qur'an. As a set of common values systematized in a thorough document (such as the US Constitution or the *Magna Carta Libertatum* in the UK) they have been updated or reinterpreted over time, but for decades their essence remains almost unchanged.

So, as in the case of the United States, the Muslim subject's consent to the act of the Qur'an was expressed at the very beginning, in the era when the Islamic state of Medina originated (Al-Hibri 1992, 11-13). The second principle, in turn, expresses the separation of power through the question of the islamic principle of shura (counseling), elaborating its functional dimensions (for extremely important questions, military or all except the imperative Qur'an norms), as well as the logical consequence of control and oversight through several forms: Firstly, the caliph and the state are subordinated to the Qur'an and the Sunnah (the rule of law), the interpretation of which is entrusted to the mujtechids (Islamic experts), secondly, every Muslim can take part in power and has the right to decide and conquer Islamic law has superior status and is applied even when it is used by an ordinary citizen against the ruler (Al-Hibri 1992, 13-17).

It is evident that there are no strong mechanisms for control of the executive, as well as guarantees for an independent judiciary, which may be a crucial aporia and enthronement of Islamic political thought. But even more significant is that Islamic political constituents do not pay much attention to this issue. More important is the discussion about the nature of the legislative power and its powers, that is, the danger that the legislation will make a regulation that is not in accordance with the Sharia. Therefore, Raja Bahlul rightly notes that even affirmatively to answer the question of the

executive as subject to authorization by the legislative branch, the subject of the discussion goes in the direction of its limits, and the biggest phobia that the Islamic constitutionalists derive from the possibility to pass a law that would be contrary to the Islamic Sharia, so for these reasons many reject the term "unqualified people's sovereignty," as well as the eminent Islamic acts the same Rached Ghannouchi and Hassan Al-Turabi, that the legitimate scope of this power does not violate the "law of God" found in the Qur'an and the Sunnah (Ghannouchi), and that democracy in Islam does not mean absolute popular power but a popular power in accordance with Sharia (Al-Turabi) (Bahlul, 2005).

And finally, a certain solution for such dilemmas through the Islamic perspective is most adequately offered by the Constitution of the Islamic Republic of Iran, that is Articles 4 and 72, which contains imperative provisions that all laws and regulations of civil, penal, financial, administrative, cultural, military and political nature to be based on Islamic principles, and that principle prevails over all constitutional and law principles. Every verdict and decisions on these issues is carried out by the "clerical" Council of Guardians (that is, experts in Islamic law). The Consultative Islamic Assembly cannot pass laws contrary to Usul Fikh (the foundations of Islamic law) and Akham (judgments) of the official religion of the country, and the Guardian Council has the duty to determine whether such a violation occurred (Constitution of Islamic Republic of Iran, Article 4 and 72). Hence, we can conclude that Islamic experts have the role of constitutional judges with extremely strong powers in protecting the official religious composition of the political system in the Islamic state.

HUMAN RIGHTS AND FREEDOMS IN THE ISLAMIC POLITICAL NARRATIVE

The concept of human rights knows one linear trajectory of progress in the Western discourse, and after the Arab spring and the revolution "Jasmine" significant shifts in their articulation and in the Islamic world. What should be noted here is that the first internationally established document, from a Western prism, is the Universal Declaration of Human Rights of 1948, as well as the two international agreements: Covenant on Civil and Political and Economic and Covenant on Economic, Social and Cultural Rights of 1966. The same international documents provided a basis for further action in the direction of promoting human rights and freedoms, their protection and promotion. But the documents also represented the cornerstone of the discord in the political narrative during the Cold War, because each camp emphasized and prioritized one of the two segments (civil and political, or economic and social) as essential and primary for the realization of human rights and dignity.

Islamic Remarks

The Islamic world, that is, the majority of Muslim states, although accepting these documents (with reserve or integral), and especially the Ulama as originally transmitted by Mudatir Abd al-Rahim, had deep reservations in the text of the document, and referred to three essential categories of remarks from all religious delegations including, of course, the Islamic. The first one refers to the tendentious marginalization of religions, although through history they have penetrated and developed one of the "fundamental determinants" of human rights as human dignity, justice, social solidarity, along with the spiritual and ethical views of life. Consequently, the call of God in the first article (at the proposal of the Brazilian delegation) is consciously omitted from the declaration itself. The second essential reason for the skepticism towards this document is expressed through the intention of the authors of religions to be given a secondary dimension through the prism of this document, which, according to the interpretation of religious authorities, expresses the stereotypical and often time-consuming premise that religions are not bona fide sources human rights, but actually an obstacle to their protection and promotion. And the third, crucial remark is the fact that the Declaration is essentially a reflection and embodiment of enlightenment, neo-enlightenment, liberalistic and secularist values (Al-Rahim 2013, 35-36). A similar tendency is also noticeable if they determine the factors that contribute to the absence of consensus in the Islamic Ulama, as well as in Islamic political subjects on this issue. The first factor is rooted in the already established and highly sophisticated tradition of human rights in Islam, which basically implies that they are guaranteed by Allah in His Revelation (Quran), so modern western, enlightening, secular and humanistic concepts are irreconcilable at least on the philosophical level. The second moment is the traditional socio-cultural differentiation that influences the interpretation of Islamic regulations in the Ulama, and which have quite often "evolved" in an inadequate manner with the basic provisions in the international human rights documents themselves (for example, women's rights, freedom of change religion, etc.), so it is quite often delicate to model which principles are Islamic and which are not. And finally, the processes of colonialism and the adequate ruining of existing Islamic institutions, the neocolonial exploitation and discrediting of the Islamic world, the question of Palestine, the torture of the infamous military camps against Muslims, gave some contribution in the resistance to the understanding of human rights and freedoms or ultimately towards proclaiming the hypocrisy of the vaccine concept of a Westerner discourse (Al-Rahim 2013, 42-43).

Universal Islamic Declaration of Human Rights

However, the Islamic political narrative opposed the international documents of a secularist and neo-liberal nature through its own autochthonous international documents. The first, the Universal Islamic Declaration of Human Rights, adopted on September 19, 1981 at the UNESCO Paris meeting, contains 23 articles, and each of it is backed by clear quotations from the Quran and Hadith in the famous Sunni collectors (Al-Bukhari and Muslim, Abu Dawood, Al-Tirdmidhi, Ann – Nasa'i and Ibn Majah, as well as Musnad – Ahmad Ibn Hnbal). The preamble text notes the reasons for its adoption, that is, the determination of human aspiration for a righteous world order, without fear, oppression, exploitation that remains unfulfilled, the affirmation that the economic resources with which God has honored the earth are spent unfairly and unfairly, that Allah gave to mankind through his Revelation in the Honorable Quran and the Sunnah of His Blessed Prophet Muhammad is a permanent legal and moral framework in which human relations and institutes should be established and regulated. In that way, human rights are aimed at providing people with dignity and honor and being intended to eliminate injustice and oppression, that with the power of the Divine source and sanction these rights cannot be restricted, abolished, or neglected by the authorities, the congregations or other institutions, nor can they be alienated or transferred (Universal Islamic Declaration of Human Rights, 1981).

Hence, the Muslim Ummah believes in: a) God, the devout, and merciful, the Creator, the Keeper, the Sovereign, the sole leader of mankind and the Source of the whole law; b) The Vicegerency (Caliphate) of the man who was created to fulfill the will of God on earth; c) In the wisdom of God's guidance brought by prophets and culmination with the "seal of prophecies", Muhammad a.s. to all mankind, d) That rationality without the light of God's revelation cannot be a sure leader or provide a spiritual diet to the human soul; e) Calling all mankind in the message of Islam; f) According to the provisions of the righteous covenant with God, the duties and obligations have priority over the rights, as well as the obligation to spread the teachings of Islam; e) Establishment of an Islamic order whose characteristics are: Equality in the rights without discrimination on grounds of origin, race, gender, color of skin, language or religion and protection against exploitation, tyranny and slavery; Authority as confirmed good and beneficial, not privilege, and the ruler and the subject are equal before the law; Equal opportunities; Family as the basis of such a society (Universal Islamic Declaration of Human Rights, 1981).

Guided by these principled determinations, the "Universal Islamic Declaration of Human Rights" incorporates the following rights which are binding on all Muslim governments and bodies that are also obliged to implement in their spirit and framework in the domestic order : 1) The right to life; 2) The right to liberty; 3) The right

to equality and prohibition of illicit discrimination; 4) Right to fairness; 5) the right to a fair trial; 6) Right to protection against abuse of power; 7) Right to protection against torture; 8) The right to protection of honor and reputation; 9) Right to asylum; 10) The right to minorities (religious); 11) The right and obligation to participate in the management of public affairs; 12) The right to freedom of thought, conviction and speech; 13) The right to freedom of religion; 14) Right to free association 15) Economic rights (earnings, use of natural resources, right to share in wealth, prohibition of monopoly and deprivation, economic activities that do not conflict with the Sharia); 16) Right to protection of property; 17) Right to protection of the dignity of workers; 18) The right to social security; 19) The right to establish a family and related rights; 20) The rights of the married woman (life in the house with the husband, disposal of funds and in Iddah – waiting period for divorce, Request for divorce – Khul'a, as well as confidentiality); 21) Right to education; 22) Right to privacy; and 23) The right to freedom of movement and settlement (Universal Islamic Declaration of Human Rights, 1981).

Although often subject to criticism even by the secularist and liberalist West and East, with an Islamophobic attribute, qualifying it as "a latent attempt by Islamic militants to redraw their own model that consciously abandons those rights that are in collision with Sharia"(The St. Petersburg Declaration of Secular Islam, 2007), however famous Islamic expert Muhammad Aqron apologizes in this way to the Islamic Declaration of Human Rights:

> The enormous value of this declaration consists in the understanding, the way of thinking and the demands that the modern Muslim world accepts. Historians could contemptuously look at the anachronistic way of designing modern concepts and concepts at the time of their establishment, the mythical period of Islam. Lawyers again can emphasize ethical idealism in the articles which are dead word on paper. However, such frustrations and actions are too frivolous (Karic 1996, 160).

Cairo Declaration on Human Rights in Islam

Another very important document that follows the appropriate Islamic rhetoric in the context of human rights should be emphasized here. It is about the "Cairo Declaration of Human Rights", adopted at the 19th meeting of the Organization of the Islamic Conference (OIC), dedicated to peace, interdependence and development in 1990. As such, it contains 25 Articles that regulate rights of a different nature that recognizes and guarantees Sharia. In the preamble itself, the declaration expresses the hope that it will serve as a general reference point for member states in the field of human rights (Cairo Declaration on Human Rights in Islam, 1990). In addition, the

historical role of the Islamic community (ummah) is emphasized and idealized as the only entity capable of solving the problems of materialistic civilization. In this regard, human rights and freedoms are an integral part of Islam, God's announcement and their disobedience and breaking are an expression of unbelief and sin. Although the Qur'an and the Sunnah provisions are not cited, as in the case of the Universal Islamic Declaration of Human Rights and Freedoms, the Quran narrative is apparent and explicit. For example, Article 1 reads: "All human beings form a family whose members are united in submission to God and the origins of Adam", as well as in the rest of the text where there is an allusion of 13 Ayat of 49 Surah - Al-Hujurat (The Chambers) of the Quran, where it is emphasized that no one has an advantage over another, except in piety and good deeds (Cairo Declaration on Human Rights in Islam, 1990).

The Declaration stipulates almost the same rights from the previous document (life, property, honor and dignity, social security, opinion and expression of opinion in accordance with Sharia, etc.) with some progression in the following areas: a) Women's rights are equal to the rights of the husband, with the husband having an obligation to support him and is in charge of the well-being of the family; b) The right of peoples suffering from colonial slavery or occupation of self-determination; c) Prohibition of any form of coercion or exploitation of poverty or ignorance for the purpose of conversion to another religion or atheism. Finally, it is emphasized that all the rights contained in the declaration are an integral part of Sharia, and the accent that Islamic Sharia is the sole source of explication and interpretation of any article of that Declaration (Cairo Declaration on Human Rights in Islam, 1990). In this context, it is undoubtedly that even the biggest skeptics, such as militant Islamic activists, have no problem with such concepts. For example, Abu Al-Ala Mwadudi argues that the Western world is hypocritical in this discourse, and Islam knows human rights and freedoms much earlier than the west in a more substantial way, designated by God that cannot be derogated by any government or parliament (An-Na'im, 2010).

CONCLUSION

The phenomenon of the re-emphasized role of the studies on constitutionalism and its connection with human rights and freedoms does not circumvent the contemporary Muslim world. The issues about the nature and origins of power, its legitimacy, the separation of power, as well as the position of the citizen are an integral part of Islamic political discourse and narrative. Such issues that in the past had a strong momentum now have a unified form of all system subjects on the political scene in Muslim societies, and even a unified stance in political Islam. In this sense, for political Islam as the subject of such a political system, the situation is striking for several reasons: *Firstly*, as we noted in our paper, the concept of human rights and freedoms is

foundered in religious texts, so the Islamic political discourse is irrelevant to the issue of their revision. The systematization exhibited as an international document has been established and any further discussion would be ephemeral, although often Islamic movements such as Ennahdha in Tunisia, Front of Islamic Salvation (FIS) in Algeria or Muslim Brotherhood in Egypt complained for their violation by authoritarian regimes. *Secondly*, the original Islamic texts after the consensus of the almost all Ulama do not contain a unique model of an Islamic order that would establish itself in a certain territory. The Quran notices caliph (ruler) and shapes its obligations, and not the composition and its form. *Thirdly*, it is already evident despite the theocratic postulates of sovereignty, the legitimacy of power is required from the citizens and they are involved in the decision-making process. *Fourthly*, it is undoubtedly that for political Islam, Sharia establishes the framework for the functioning of the legislative power, which must not exceed its limits, that is, to pass laws that would be collisions with sacred texts. *Fifth*, perhaps the essential drawback is the absence of strong and visible mechanisms of control and balance of the authorities, and these questions should be given more solid and more purposeful responses in the future. It is also evident that the issue for now does not take a central place in Islamic political discussions.

On the other hand, the relationship of political Islam to human rights and freedoms suggests several essential conclusions. *First*, there is a visible Islamic narrative in its content; *Secondly*, they are an integral part of the Sharia as the fundamental value paradigm of political Islam. *Thirdly*, their interpretation and elaboration stems solely from the Qur'an and the Sunnah as its references and sources of political Islam, and no interpretation is permitted beyond the given framework of sacred texts; and *Finally*, through codification at the international level, although of non-binding character, the progressive line of political Islam and Islamic societies with the contemporary world order regarding human rights and freedoms is emphasized, but with a special emphasis on problems concerning the Muslim world, such as (neo) colonialism, the question of Palestine, secularism and westernism, inter-Islamic social and political solidarity, international assistance for victims of war area etc.

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Indexing
Abstracting

HISTORICAL CONTEXT OF IDEALISM VS. REALISM

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Abstract

Various theories in international relations offer multiple models of explanation of relations between states, but most of them are based on the idea that states act in accordance with their national interests. In fact, in its essence state interests include the need to maintain security, sovereignty and the development of the economy. Classical realists such as: Thucydides, Machiavelli, Hobbes and Rousseau, see at the conflict as a natural state in international relations, not as a consequence that can be attributed to historical circumstances, wicked leaders, disturbed socio-political systems, or international disagreements. The basis of the theory of idealists such as: Grotius, Kant and Bentham are the denial of the right to war, because they consider it is possible to establish an authority capable of maintaining peace. From the perspective of the idealists, wars are caused by egoistic interests of state leaders at the expense of the interests of the citizens.

Keywords: realism, idealism, war, peace, politics

INTRODUCTION

The concept of idealism stems from the old political philosophy, which is, encountered in texts by several authors of ancient philosophers. Aristotle himself, with his notions of justice as a perfect virtue, strongly influenced the development of political concepts, especially until the beginning of the middle ages.

The existence of laws and international organizations, for the idealists is inevitably in the world of international politics. That is, the society should raise to the pedestal those organizations whose goal is the protection and promotion of peace and security in the world and to eliminate those that only declaratively promote peace.

Realism starts from the theory that poor human nature leads to conflicts, but also to the incapacity to solve them because of the selfishness of a man who sees his own enemy in the other. Therefore, the significance of military and state power is crucial, from the aspect of this theoretical approach. For the so-called classical realism, conflict and anarchy are quite normal phenomena in international relations, setting power as the main theme of the realistic conception (Kant 2007).

Realism focuses mostly on state security and power. States are interested only in themselves, and they are rational actors who only strive for power and seek to maximize their safety and chances of survival. Any cooperation between states is explained as functional in order to maximize the security of each individual state (as opposed to many idealistic reasons).

THE FOUNDERS OF REALISTIC THEORY

The Realism of Thucydides

Thucydides is the first true scholar in the field of international politics and the research of thought in this area, starts with him. Unlike the contemporaries who saw the war as "God's work," Thucydides has explained war through human nature and through basic human impulses, such as aggression, fear and egoism. Inevitably, Thucydides also saw the role of power, so he concluded that the powerful do what they can and weak what they must. Thucydides with his political thought removes the role of religious interpretations in politics.

In the analysis of all social processes, Thucydides starts from the man, from his nature, the fear and personal interest that make the man to endeavor to rule with the others. Based on this, according to Thucydides, the strong absorbs the weak, so his power poses a threat to the weak (Maleski 2001). Similarly to human beings, also the states behave in their relations - weak states have the option of joining the powerful or seeking protection from another force. Fear and concern for the security of states in international society, as well as the polarization of power that arises in their relations, cause war. However, the paradox of war is that the states involved in it, regardless of how strong they are, begin the process of their weakening. It is known that war brings bad consequences such as death, hunger, increased taxes, and illnesses. With this, states begin to degenerate (Maleski 2001).

According to Thucydides, there is no difference between the personal motives and the motives of the community, i.e. there is no difference between personal and political motives. For Thucydides, the motives are security, fame and interest. But since other people want the same thing, the path to achieving the goals is through a competition for power, because the power itself brings the fulfillment of the three main human motives. War is the most extreme power contest. Similar to man, the power of one country determines its place in international politics. Always dominates that side that has more army, money and ships. But the reasons for the war Thucydides not only founds in the violence of man but also in the structure of the international system of states. The anarchic nature of international order makes states suspicious of the rise of power in other countries:

> While it is not true that there is no morality in international politics, moral choice is limited by the elementary security of the state. Sometimes such a choice does not exist. The necessity of the war, for example, forces the survival of one's own country to be put before the survival of another, in the same way as when a parent who sees two children in a mortal danger, in the absence of a greater choice, is determined to save his own, leaving to die the stranger (Maleski 2001).

In the early 20th century, Max Weber in this way added this thought to the Economic Ethics of World Religions: "The interests, material or ideal, and not the ideas, directly rule human action. But the 'images of the world' that created the ideas often act as railroads on the track, according to which the dynamics of interests continue to move" (Weber 1948).

"The Prince" of Nicolas Machiavelli

In the period between Thucydides and Machiavelli, church laws dominated the human mind, but they were seriously shaken when the contemporary time begins, that is, with the advent of the Renaissance period. Machiavelli is the thinker who has renewed his scientific approach in researching interstate relations. However, a bad reputation follows Machiavelli and it is due to the lack of understanding of the political context in which his work was created. It is necessary to understand the time in which Machiavelli lives and works, in order to understand his contribution in revealing the hypocrisy of that time and of that morality. Machiavelli's merits are that he, by means of his political thought, refutes the religious theories that surrounded the human mind at the time. Many theorists of that time were not indifferent to Christian teaching, so it inevitably took up part in their political theories. The very political ideas themselves were mixed with the religious, i.e. there were no norms of civil behavior that were exempt

from religious norms. For the first time, Machiavelli applied pure science in analyzing the political phenomena and therefore we consider him to be the first contemporary political thinker who threw out everything that is not political from the political theory. The political man, for him, was not a saint but a man pushed into reality, in the battle for power, fame, profit and status, and created enemies with people who were like him, were basically driven by the same motives. His approach to the analysis of international politics understood everyone's position, even position of Italy's ruthless enemies (Wolin 2009).

The "Prince" (Italian: *Il Principe*) is a political debate by the political theorist, Nicola Machiavelli. It was written in 1513, and was originally titled "For the Principals" (De Principatibus) (Mattingly, 1995). According to Machiavelli, the greatest moral good is a virtuous and stable state, and so the actions aimed at protecting and preserving the state are justified, even if they are cruel (the famous thought of Machiavelli "The goal justifies the means") (Mattingly, 1995). However, Machiavelli firmly advises that the ruler must not afford to be hated. He says: "... the wise ruler should be strengthened by his power, and not the power of others; as I have already said, he must endeavor not to become hated. It is best to be loved, but at the same time be afraid of you; however, if both are not possible, then you better be frightened than you are loved." (Machiavelli 1513).

In the introduction to "The Prince", the author draws out effective methods for managing several types of principals (for example, newly discovered vs. inherited). Machiavelli explained to the reader, assuming that he is a member of the Medici family, the best ways of acquiring, maintaining and protecting the state. In doing so, the author determines that what is necessary must be achieved, regardless of the route.

A self-governing ruler is one who can confront any enemy on the battlefield. However, a ruler who relies solely on help from a side and stands in self-defense is not self-sufficient. If he cannot gather a strong army, but must count on self-defense, then he must establish the city. The likelihood of attacking a well-fortified city is unlikely and even if that happens, most armies cannot withstand a long-standing siege. However, during the siege the virtuous maintains high morale among the subjects, removing the dissidents. Thus, as long as the city is adequately defended and has a sufficient supply, the wise ruler can withstand any siege.

The main preoccupation of one ruler should be warfare, or preparations for him. The hereditary ruler with a war maintains his power, and the private citizen thus gets the opportunity to rise to power. Machiavelli advises that the ruler should often go hunting in order to keep fit and to learn the terrain of his kingdom well. In this way, he has the best opportunity to learn how to best defend his territory or attack territories similar to his. For intellectual power, Machiavelli advises the study of the lives and works of the great military leaders, for the ruler to repeat their successes, and at the same time

to learn from their mistakes. A ruler who is diligent in peacetime will be ready in times of distress. Machiavelli writes: "Thus, when fate will turn against him, he will be ready to defy her." (Machiavelli 1513).

In response to the question of whether it is better to love you or to be afraid, Machiavelli says, "The answer, of course, is to be loved, but at the same time be scared. But since both rarely go together, when it has to be chosen, it's much safer to be afraid than to love you" (Mattingly 1995). He argues that the promises made in peacetime are not always maintained in times of distress; while promises made with fear are held out of fear. However, the ruler must be careful not to be scared so that he will become hated, which is very possible. Machiavelli says that the ruler must not interfere in the property of the subjects, their wives, and their lives without proper justification.

As far as the ruler's army is concerned, fear is absolutely necessary to maintain the order and unity among a large number of soldiers, and therefore the ruler should not worry about cruelty in this regard. Cruelty is imperative for a military leader who is the only way to maintain absolute respect. Machiavelli makes a comparison of two great military leaders: Hannibal and Scipio African. Although the Hannibal's army was made up of soldiers of various nationalities and races, they never rebelled because they feared their leader. On the other hand, Scipio's soldiers were known for rebellion and troubles, suggesting that according to Machiavelli, the cruelty of one ruler determine his successful rule.

About the Human Nature: Thomas Hobbes

Hobbes completely cleared up the medieval teaching of the state as the most perfect natural community, which is part of the world divine order. Hobbes considered it a misconception that man by nature was a social being. On the contrary, by nature, according to Hobbes, man is a selfish creature who strives for self-preservation, at all costs, i.e. he tries to keep his life even at the expense of others' harm. Human enduring striving for governance with other people disappears only when a person dies (Hobbes 1955).

According to Hobbes, almost all people are equal in their physical and spiritual abilities and therefore have the same right of all things. Because of the tendency to take possession of these things, people are fighting each other, striving to destroy them. In other words, by its very nature, the human being is a wolf (Latin: *Homo homini lupus est*). Because every person is a potential enemy of the other, everyone is afraid to be attacked and destroyed, whilst fear and mistrust lead to war.

Namely, the best way for man to defend himself from other people is to frustrate their intentions, completely subordinating them. Hence, the natural state of the people is characterized by a war of all against all (Latin: *Bellum omnium contra omnes*).

In that state, there is neither righteousness nor peace, but everyone has the right to do everything necessary to protect and suppress other people, so that human life is "lonely, miserable, dirty, cruel and short" (Hobbes 1955).

The fear of death and the aspiration for a peaceful life encourages people to seek a way out of the state of constant war, and the reason tells us that the exit is in peace. In this, reason reveals natural laws, and under "natural law," Hobbes implies a general rule of reason that prescribes what a man must, and which he must not do to succeed in life. All natural laws stem from the first, basic law that says everyone should strive for peace, while there is hope to achieve it, and when peace cannot be realized, then war can begin. From this basic law comes the second law, according to which, if the others are ready to do the same, he himself must renounce his natural right to everything and be satisfied with such freedom to others as they would he allowed himself in relation to himself. Thus, this law requires a person to abandon those rights which, if retained, prevent peace between people.

Hence the third law arises, which demands that we be just and respect the agreements with which our rights have been transferred to other people. There are also other laws, for example: to be grateful for benevolence, to forgive the insults of people who sincerely repent and so on (Hobbes 1955).

The state arises on the basis of an agreement by which people inhabiting a certain territory transfer part of their natural rights to one person (monarchy) or to a group of people (democracy), whereby the ruler should provide them with a peaceful life. Hobbes defines the state as an absolute power in which the sovereign (the ruler) has all the power, and all subjects must be submissive. In doing so, the sovereign has unlimited rights: he decides on peace or war, prescribes rewards and punishments, judges people, determines which doctrines and religions are right, and so on. Also, the people have no right to forcefully change the ruler, i.e. it must not raise rebellions and revolutions because it would mean that the people are rebelling against themselves, because the sovereign rules in the name of the people themselves.

According to Hobbes, the absolute power means that there is no separate and independent legislative or judicial power, nor that ecclesiastical authority can be over the ruler's power (Hobbes 1955).

On the State of War: Jean Jacques Rousseau

As a representative of the radical conception of the natural-legal theory of civil society, Rousseau particularly draws attention on two essential states. First, Rousseau, unlike the other theorists of the natural-legal (contractual) theory, sees the society that comes through the conclusion of a social contract as a "moral and overall organism" as a "social man" that "its unity, life and will" is acquired as a result of the "alienation" (in

terms of their organic transfer) of the natural rights of the creators of that agreement and their "transfer" to the new state (organic) community they create. Every citizen - said Rousseau - to be completely independent of all others, and completely dependent on the state. This is always achieved by the same means, because only the power of the state makes the freedom of its members. "Civil laws occur precisely in the second relationship" (Rousseau 1978).

Rousseau makes the difference between the will of all (*volonte de tous*) and the general will (*volonte generale*); "The latter sees only the general benefit, and the first - the benefits of the individuals, and therefore it is only a set of individual wills ... For general will come to the true expression, it is very important in the state not to have separate societies and every citizen to vote according to own confidence" (Rousseau 1978).

In the Social Contract, Rousseau begins with the idea that a just society is based on an agreement that will guarantee the equality and freedom of all citizens. This agreement applies to all participants, that is, all citizens of the society. In this social contract everyone gives up his natural freedom to gain civil liberty. People's sovereignty is the main principle of the social contract. The indivisibility of sovereignty is another basic theory, by which it is stated that the power of the sovereign (meaning society as sovereign) will not be divided, nor can it be separated for some individual interest, because the individual interests are contradictory to the general interest, whose fulfillment is the main goal of the social contract. Rousseau sees the deal as a result of the "natural state" in which the stronger is governed. For him, the right of the stronger cannot be the guiding principle of a society because it is disproportionate with the general interest, and therefore with the social contract: "the strongest is never strong enough to be a master until he transforms his power into law and subordination in duty." (Rousseau 1978).

The rejection of the social contract is the return to the natural state that is primitive, pre-social, tyrannical and useless. A society that violates its social contract ceases to be called a society. With these words, Rousseau opens the section: "I want to figure out whether there may be some legitimate and secure rule in the civil order, taking people into account as they are and the laws as they can be. I will give the task, in this work, to mix what is right with what interest attributes as long as justice and benefit are not completely separated" (Rousseau 1978).

The Social Contract is a philosophical-political discourse that asks how a person, after overcoming the natural state and entering the social state, can create a social order in the service of general interest. The agreement Rousseau talks requires each individual to give up his rights to acquire the legal equality of society. For every person to acquire freedom, he must be alienated from nature. The legitimacy of the treaty rests on the fact that man does not alienate in the true sense of the word (nor does he make

the exchange of natural law nor gives it to anyone else), but he realizes that the social contract is opposed to the existence of the natural law.

In the second book, Rousseau examines the legislative problems: "Through the social agreement, we give the existence and life of the political body: now we need to give him mobility and will through the legislation" (Rousseau 1762). On the other hand, the question remains what is the law: "when the people rule the whole nation, it takes self-consideration (...) So what we regulate through law will be as general as the will of the law. I call this act a law. Everything that Rousseau writes, he tries to point out that everything is in the service of the ruling general interest. After this, it begins to elaborate all the differences of the political body, beginning with the legislative power.

The human being, according to Rousseau, is a lonely individual, he must learn in the natural world, far from the influence of society, which would spoil him. For him, only the influence of nature is essential. Like the famous "empty board", his mind will receive impressions in a row and will develop in harmony with a person free of any bad social influence (Temkov 2014).

In an unnatural state, people are selfish and do not think of the general good, while in the natural state, first, it is the general benefit, harmonized with love for oneself. Man by nature is good. Therefore, the highest quality of human beings is the conscience, which elevates it to the image of God. Rousseau writes: "Oh, conscience, conscience, divine instinct, immortal and celestial voice, trusted leader of an unquenchable and limited, but intelligent and free creature, an unmistakable judge of good and evil, giving man a similarity with God, thanks for the perfection of our nature and the morality of our deeds" (Rousseau 1762). According to Rousseau, a man is naturally good, but he must not be spoiled by civilization. The progress of science, art and economy should not lead to the loss of a healthy natural harmony with nature. Civilization, according to Rousseau, progressed with huge strides and began to destroy nature, so we are more talking about the necessity of harmony with nature.

"The natural state of humanity does not exist anymore, it may have never existed, and probably it will not exist - but for it we should have the right ideas, so that we can study our current situation well. How much crime, wars and murders, how much trouble and suffering would it save the human race who would shout to their fellowmen? Do not listen to the deceiver, you will fall by forgetting that the fruits of the land belong to all, and the earth to anyone. Someone thinks he is master over others, yet he is a bigger slave than them" (Rousseau 1917).

THE FOUNDERS OF IDEALISTIC THEORY

Laws of War and Peace of Hugo Grotius

In his work "Laws of War and Peace", Hugo Grotius, in defining the war, quotes Cicero, who defines the war as dealing with conflicts using force. In fact, war is the state of those who struggle with power; this general definition includes all types of war; excludes private war because it has its origin since ancient times and has the same nature as the public war. Further in his work, Grotius explains that private is the war that runs between people who do not have authority, and a war is being held between people who have authority and authority. He mentions the third kind of war, which is the so-called mixed war as a combination of a party with and a party without authority to conduct a war (Grotius 2012).

Further in this work, Grotius opens the question of the righteousness of the war, wondering if any war is just, or is it at all permitted to fight. Once more, Grotius starts from Cicero's points of view, which, as a basis for reviewing this question, has taken on the natural law, explaining that every animal, from birth itself, is guided by the natural principles of survival, while avoiding actions that could involve a personal breakdown. In fact, according to him, every person is important "to have all the parts of his body in the correct order" than to "be decomposed and distorted" (Grotius 2012).

Therefore, everyone strives to maintain his natural state and to reject all things that are contrary to the natural state. According to Cicero: "There is a law that is not written but it is born with each one of us, a law that we have not learned, received, read, but comes with our nature. We are born on the basis of this law - that if our life is put under threat in any sense, under arms of the enemy or anyone else, every way of ensuring security is morally upright" (Grotius 2012).

Immanuel Kant's Peace, Morality and Politics

Kant is one of the most influential European thinkers and the last great philosopher of the Enlightenment. He is one of the most significant representatives of Western philosophy. His Critique of the Pure Reason (*Kritik der Reinen Vernunft*) marks a milestone in the history of philosophy and the beginning of modern philosophy. Not only in the theory of cognition, but also in ethics and aesthetics with works like Criticism of the Practical Mind and Criticism of the Power of the Trial, but also with certain writings related to religion and law, creates a new comprehensive perspective in philosophy (Kant 1998). Writing for peace, morality and politics, Immanuel Kant says that one who takes power once in his hands will not allow the people to prescribe laws, that is, that a state that is free from external influences will not be subjected to decisions of

other states that would regulate the exercise of their rights in relation to them. Thus, if there is no freedom and morality that rests on freedom, then surely politics is all practical wisdom, and the concept of justice is an empty thought. For Kant, it is easy to imagine a moral politician who chooses the political principles that are in line with morality, but it is unthinkable for him to be a political moralist, that is, a man who shapes morality to be in line with the benefit of the statesmen in a particular situation.

According to Kant, when in the basis of the state or in its relations with other states there will be some irregularity that can be corrected, the principle pursued by the moral politician is that it has a duty to investigate as soon as possible the shortcoming to be repaired in a manner that is in accordance with an adjacent law, as a model represented by reason.

Speaking of despotism, Kant points out those despotic moralists, sinning in practice, often violate the rules of political caution through measures that they apply overly, but the skills they experience will gradually deter and guide them in a better way.

Hence, objectively or theoretically, there is no conflict between morality and politics. However, subjectively, this conflict exists in the egoistic interests of man. The political moralist can say: The ruler and the people, or nations and nations, do not inflict any injustice on each other when, with violence or deception, they fight against each other, even though they do wrong because they do not respect the concept of righteousness, which is the only one who can establish eternal peace. When one violates his duty to the other, who also does not obey the laws in relation to him, everyone will delude what he deserved when they are mutually destroyed.

True politicians cannot make a step forward without the necessary respect for morality. Human rights must always remain sacred, regardless of the sacrifices that the ruler must submit. There should be no compromise with regard to the rights of the people and require some secondary solution to the pragmatic right that is somewhere between morally and usefully. All policy must be folded before the righteous, to reach the stage when it illuminates with an immortal shine (Maleski 2000).

According to Kant, freedom is the only basis for the existence of the state. His concept is the theoretical basis of all modern political theories, whereby promoting freedom in a single and primordial condition of the state is at the same time a key argument against all utilitarian conceptions of power. Kant's understanding of freedom is a philosophical inspiration of liberal democracy, as the rational and ethically most appropriate model of the state (Kant 2007).

Peace among Peoples: Jeremy Bentham

Jeremy Bentham (1748-1832) based his ethical teaching on anthropological-psychological facts, according to which man aspires to avoid suffering and pain in order to achieve satisfaction. According to him, man is sovereignty governed by pain and pleasure. In developing his own ethical theory, Bentham has built up a kind of moral arithmetic or ethical account that includes several important criteria for determining the value of the pleasures themselves. According to him, such criteria can be reduced to seven basic ones: Intensity; Duration; Visibility or Uncertainty; Proximity or Distance; Fertility; Cleanliness; Volume i.e. number of persons to whom pleasure is spreading. Even the seventh feature includes Jeremy Bentham and utilitarianism in the history of well-known ethicists. The appreciation of pleasure, i.e. its breadth and quantity give Bentham a broad social and humanistic dimension: the greatest possible happiness for the largest possible number of people, satisfaction will be more valuable if it spreads to a larger number of people (Majhoshev 2012/13).

In one of his essays, he offers the world a plan for universal and eternal peace (Maleski 2000). The Bentham plan proposes two basic proposals, namely reducing and fixing the extent of the military power of several nations that make up the European system and the emancipation of distant dependent territories of each country. The ultimate goal of the plan he proposes is to propose unrestricted power, saving the state and peace. In fact, it devotes its plan to all civilized nations, but especially to the United Kingdom and France.

First, focusing on the UK, Bentham says he is not in the interest of having any dependent territories abroad, because, according to him, distant territories increase the chances of war and rarely colonies are a source of profit for the state.

Secondly, Bentham believes it is not in the UK's interest to have an alliance, offensive or defensive with any country, because there is a danger of a war arising from any alliance.

A third proposal Bentham gives to Britain is that there should be no agreement with any force to gain an advantage in trade because the volume of trade that a country is able to implement is limited in its scope capital. It should not be assumed that the volume of trade is unlimited.

As the fourth suggestion, Bentham states that it is not in the interest of the state to maintain naval force greater than that necessary to protect its trade from pirates, since such force is unnecessary, save for the protection of the colonies and for waging war. Continuing with recommendations for France, Bentham concludes that there is no reason to be afraid of any other nation or nations, nor do we demand anything from them, nor have we what we can say or hear from them that cannot be the same publicly as public laws (Maleski 2000).

CONCLUSION

These famous idealists and realists expounded their views taking into account the circumstances in which they worked. The classical realists perceive the conflict as a natural state in international relations, not as a consequence that can be attributed to historical circumstances, wicked leaders, disturbed socio-political systems, or international disagreements. The classical realists agree that the behavior of states is usually rational. The assumption behind this key point is that states are guided by the logic of "national interests", most commonly defined within sustainability, security, power and opportunities. Therefore, the significance of military and state power is crucial, from the aspect of this theoretical approach. For the so-called classical realism, conflict and anarchy are quite normal phenomena in international relations, setting power as the main theme of the realistic conception.

Idealism, as a theoretical approach, denies the right to war, because it considers it possible to establish an authority capable of maintaining peace. But while such authority is not set up globally, it requires a strict adherence to the rules of war in order to minimize the consequences of the war.

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Indexing
Abstracting

CIVIL SOCIETY AND DEMOCRACY DEVELOPMENT IN KOSOVO

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Abstract

The paper analyses the most fundamental aspects of civil society development in Kosovo and its impact in the overall democracy development. Author aims to develop after presenting a short history of development of this important sector, to develop a discussion from the praxis perspectives, to combine the discussion from the practice in the field, explaining how the sector evolved in post war Kosovo, which were the phases of its development and the role the donors played in its creation. This will be done by using combined methodology: method of systemic analysis, method of historical analysis, method of comparison, method of legal analysis, etc. Finally, paper will come out with the conclusions and the recommendations that are expected to be useful for both academia and the civil society sector.

Keywords: democracy, civil society, development, donor, sector, mission

INTRODUCTION

Kosovo is a newly created state on the territories of former Yugoslavia. Kosovo proclaimed its independence on February 17, 2008. As the state it derives from the process of dissolution of former Yugoslav federation. Until now Kosovo according to the Ministry of Foreign Affairs (Republic of Kosovo, Ministry of Foreign Affairs, 2017), has been recognized by 113 states of the world. From June 10, 1999 Based on UN Security

Council Resolution 1244 Kosovo was put under the international civil administration UNMIK (United Nations Mission in Kosovo). UNMIK exercised its power through the following pillars:

- Pillar I – responsible for humanitarian assistance, which was led by the Office of the United Nations High Commissioner for Refugees (UNHCR);
- Pillar II – responsible for Civil Administration, which belonged to the UN;
- Pillar II - responsible Democratization and Institution Building, which was led by the Organization for Security and Co-operation (OSCE); and
- Pillar IV – responsible for Reconstruction and Economic Development, which was managed by the European Union (EU) (KIPRED 2005, 2).

Based on these pillars the life was organized in Kosovo whereas since then until February 17, 2008 Kosovo has undergone through various processes in order to enter into the process of final status determination which actually happened on February 17, 2008 when Kosovo Parliament adopted Kosovo Declaration for Independence. Prior to it several conditions had to be fulfilled including so called *Standard Before the Status*, Vienna dialogue with Serbia (facilitated by the President Ahtisaari), etc. Along with the International Civil Administration in Kosovo entered a big number of donors to support the civil society initiatives. Thus a donors marked was created in Kosovo whereas there was only a small number of local civil society organizations organized and active. No matter of the donor's engagement and no matter of other engagements Kosovo civil society remains to be still on its development phase. The paper is built up on the hypothesis that the third sector or Kosovo civil society didn't meet the expectations at the level and as expected by the Kosovo society and by the international community.

KOSOVO CIVIL SOCIETY AND
THE BROADER MEANING OF THE THIRD SECTOR

The term civil society is often seen to be used by politicians, intellectuals, activists, journalists, etc., all over and not only in Kosovo. This term is being used in politics and in the science with the understanding that civil society is instigator of political, economic and social developments. It is a mistake when quite often the notion civil society is treated equal to NGOs. It is also a mistake when it is said that civil society is noisy entity. There are also dilemmas "when there are attempts to confirm that a strong civil society ensures democracy or *vice versa*." (Rrahmani 2010). And in various debates term third sector gets different explanations that in sense are not different about its content. The third sector in post-communist countries "could be compared to a patient who, after a period of imprisonment and a stroke, is now beginning to learn

how to walk and talk once more; in addition, the language and lifestyle of others have changed during the isolation, so the 'convalescent' is compelled to rediscover the basic principles of his own existence." (Ondrušek (ed) and Associates 2003, 13). In fact, after the fall of communist system we in a way see a rebirth of civil society and we cannot say that there was no history of the sector. It might be that it was frozen over the decades- somewhere more and somewhere less. Essentially, organizations and associations of citizens whom we call under the context of this paper NGOs, are not inventions of the modern time and indeed these mechanisms did not appear on the phase of dissolution of the communist system. Americans "of all ages, all conditions, and all dispositions, constantly form associations" (Ondrušek (ed) and Associates 2003, 15). They make associations:

> to give entertainments ... to build inns, to construct churches, to diffuse books ... and in this manner they found hospitals, prisons, and schools ... As soon as several of the inhabitants of the USA have taken up an opinion or a feeling which they wish to promote in the world, they look out for mutual assistance; and as soon as they have found each other out, they combine. From that moment they are no longer isolated men, but a power seen from afar, whose actions serve for an example, and whose language is listened to (Ondrušek (ed) and Associates 2003, 15).

One cannot discuss and write about civil society or about the third sector if there is no discussion about the way this sector was organized. And to this point it is good to see how an American historian P.D.Hall writes that:

> Non-profit organizations differ from each other immensely in their size and scope of activities, from community and neighborhood organizations without any property or staff of their own, to wealthy foundations, universities, and health care centers with thousands of employees. They also hugely differ in their activities – from offering traditional charitable help to the socially needy through the production of goods to the performance of qualified research (Ondrušek et al. 2003).

To this, the bellow paragraph to some extent enriches the notion of civil society or the third sector. The term "third sector"

> Has emerged as a *précis* of these activities. The sheer variety of individual activities also gives rise to a need for other terms of description, each of which emphasizes a different aspect: 'non-profit sector'; 'voluntary sector'; 'public-benefit sector'; 'non-governmental organizations'; 'non-state organizations', 'charitable (or humanitarian/philanthropic) organizations'; 'self-help groups, clubs, or organizations'; the British term, 'non-statutory

sector' (i.e. a sector not defined by the law), or 'informal sector'; the American term, 'tax-exempt sector'; the French term, 'économie sociale' (used in France and in institutions of the European Union), and the German terms 'gemeinnützige Organisationen' & 'gemeinwirtschaftliche Unternehmen'. The term 'civil sector' is also used (Ondrušek et al. 2003, 16-17).

Ten years ago I worked for the Freedom House report and bellow it will be presented a very short part of it. Of course after that (but it was also before that) there were many reports papers, researches, etc., published but this remained uncontested. The development of civil society in Kosovo occurred in four phases. The first phase began in 1989 when two organizations, the Council for the Defense of Human Rights and Freedoms (CDHRF) and the Mother Teresa charitable society, were established and other political mechanisms created a parallel system in contradiction to the Milosevic regime. Also at that time, the organization of independent trade unions began. Almost all the NGOs at chat time dealt with the protection of human rights or humanitarian activities, and all were opponents of the regime. The second phase began in 1995 with the appearance of so-called chink tank organizations such as Riinvest and the Kosova Action for Civic Initiatives, among others. Until the end of 1998, only a small number of organizations existed in Kosovo, but notable for their success and efficiency in the scope of their activities. The post-conflict third phase in NGO development in Kosovo--also called "the emergency phase" - was distinguished by the creation of a large donor market numbering around 500 donors in 1999 by some estimates. The fourth and current phase is known as "the mushroom phase" because of the rapidity with which organizations have appeared. In general, the procedure for NGO registration is easy and takes place in the Ministry of Public Services" (Rrahmani, B., Zogiani, A 2007, 360).

I will continue to complement this with the work of some other authors, in giving some more historical background about the civil society development in Kosovo before discussing issues on current situation and the impact in the democracy development. In 1989 the majority population (Albanians) was excluded socially, economically, politically from what was remained to be the system of Yugoslavia. Indeed with the imposed changes of the constitution in fact Yugoslavia entered into the process of dissolution whereas Kosovo was put under the threat of permanent violence. By being excluded from the system which was in fact occupied by the other federal unit (Serbia) Kosovo majority population was put in a situation to create a system that first of all ensures minimum conditions of life. Thus the "Albanian Kosovars withdrew and developed a parallel and clandestine socio-economic system embracing private schools and university education, a health service, and even mechanisms for administering local justice" (Sterland 2006, 12-13). This parallel system was very legitimate effort on entering

into the new difficult circumstances. In a time when complete population was excluded from a system, a parallel system of the majority population to be created was a necessity. Thus, the created parallel system during a period of time could be viewed as a civil society sector (with a various NGOs and movements within it) which opposed the Serbian Government and its measures in Kosovo. And how can we define civil society? "From a historical point of view, the term represents an emergent institutional sphere of social and political activism that has had an impact on shaping the state and its functions, and also in the construction of a pluralist political culture" (KIPRED 2005, 3).

The life of the parallel system was financially supported by the government in exile, whereas within the parallel system there were supported most important segments of life. An income 3% tax at home and the diaspora contribution kept a life especially the school system. Mother Teresa was one of the best organized associations. "By 1998, it was running 91 health clinics, employing some 7.000 volunteers and providing health care and humanitarian aid to 350.000 people. In 1996, with aid from the World Health Organization it immunized 300.000 children for polio" (KIPRED 2005, 5).

Within the parallel system we see in Kosovo appearance of political parties among which Democratic League of Kosovo was the first non-communist political party created in Kosovo. This political party took a leading position on non-violent refusal of the Serbian system considered to be foreign. Thus "in spite of its official designation as a party and its function as a political movement, the developments after 1990 resulted in the LDK being sometimes identified by Western observers and journalists – alas, very problematically – as a civil society organization" (KIPRED 2005, 6).

Regarding civil society organization theory and practice enumerate various organizations and political parties for an organized state do not belong to the CSOs. The CSOs we see to act as humanitarian, health, human rights, advocacy, lobby, etc., organizations. And we find them in every state. We find them to be also transnational. Most practitioners agree that the civil society sector is composed of entities that are:

- Organizations, i.e., they have an institutional presence and structure;
- Private, i.e., they are institutionally separate from the state;
- Not profit distributing, i.e., they do not return profits to their managers or to a set of "owners";
- Self-governing, i.e., they are fundamentally in control of their own affairs; and
- Voluntary, i.e., membership in them is not legally required and they attract some level of voluntary contribution of time or money. (Lester M. Salamon, Helmut K. Anheier, and Associates 1999, 3-4).

Discussion about the civil society before the war (until 1999) and after the war leads us to comparison between these two long periods of time: each with its main characteristics that is not the main goal of this paper. Of course in both we find

organizations that act and difference is in number and in the field of their activities. Before the war their number was smaller and the activities were not broad. But no matter of their (before the war) number and of their activities they all together created a unified front against Milosevic's regime and at this point they were somewhere between national political movement and the civil society. The initiative for reconciliation of blood feuds amongst Albanians in the early 1990s took on the proportions of a social movement. The Council of Reconciliation, led by the respected professor Anton Çetta, was instrumental in abolishing the traditional practice of revenge in Kosovo Albanian society. The campaign "enjoyed huge support, as solidarity amongst K-Albanians grew in the face of the external threat personified by the regime in Belgrade. This led to the creation of a Pan-National Movement for the Reconciliation of Blood Feuds, which resulted in more than 2,000 families being reconciled." (UNDP 2008, 38). A "Council of Reconciliation" was established which "tracked down Albanian families (even those living abroad) and brought them together for a mass reconciliation; this event then spawned the Pan-National Movement for the Reconciliation of Blood Vendettas." (Independent Commission Report, 45). This was one of the most unique initiatives that appeared at an appropriate momentum. And the results of this initiative were tremendous. The activities of reconciliation of Blood Feuds were developed even before this period of time, but they never achieved results as they were achieved at this time. This, as it was said because of the appropriate momentum.

Additional Theoretical Background

The rise of "the civil society sector may, in fact, prove to be as significant a development of the late twentieth and early twenty-first centuries as the rise of the nation-state was of the late nineteenth and early twentieth centuries" (Lester, M., Salamon, S., Sokolowski, W., Regina, L 2003). Theoretically the ideas of civil society are found in the works of many authors that go much far back in the history, but I am not developing the theoretical discussions about civil society, therefore I am not mentioning Plato, Aristotle, Hegel, Gramsci, Putman, etc. The cited in this paper are from the efforts to put the raise of the Kosovo civil society from the last years of the XX Century up until now. The idea of the author of this paper was to use a study that at these times comes with something explaining the sectors of the society (three sectors) and any of them can be discussed as it goes: "Even now, social and political discourse remains heavily dominated by a "two-sector model" that acknowledges the existence of only two social spheres outside of the family unit—the market and the state, or business and government. This has been reinforced by statistical conventions that have kept this "third sector" of civil society organizations largely invisible in official economic statistics." (Lester, M., Salamon, S., Sokolowski, W., Regina, L 2003). Do we have to consider

everything within two sectors? If we do so then how can we consider activities that are developed by the sector (main vehicles: NGOs, social movements, etc.) and that are purely of the public interest. Obviously, they cannot be putted neither in business / economy sector nor in the state sector. Also important is the sector's advocacy role, its role in identifying unaddressed problems and bringing them to public attention, in protecting basic human rights, and in giving voice to a wide assortment of social, political, environmental, ethnic, and community interests and concerns. Thus…"the civil society sector is the natural home of social movements and functions as a critical social safety valve, permitting aggrieved groups to bring their concerns to broader public attention and to rally support to improve their circumstances" (Lester, M., Salamon, S., Sokolowski, W., Regina, L 2003). A strong civil society:

> Is one of the pillars of the house of democracy. We are reminded of that not only by examples from history, but also from today. The American historian, Anne Applebaum, highlights this in her recent book *The Iron Curtain: The Crushing of Eastern Europe*. She shows how the civil movement, organizing spontaneously and courageously to rebuild Berlin after the war, was crushed because it was a threat to Soviet power (von Sydow 2013, 7).

In every country, in every recommendation we usually after the discussion of the problems, we see findings and we see recommendations. And the question of sustainability of the sector along with the viability comes to be among the main questions. Then we talk about the public perception on NGOs, their capacities, their weaknesses, etc. No matter of donors or the financial situation of the main actors within the sector, the importance and the need for civil society activities cannot be neglected. They can be neglected and/or forbidden only in non-democratic countries. Without this sector democracy is questioned seriously. Or as author Emily von Sydow stated:

> We no longer talk about our new societies as melting pots, but why not stress the meeting spots? The most obvious are in the workplace, school or university, but also in associations, societies and unions. Organized civil society may be your way to reach out, to participate, and to root yourself in your community. Without your participation, society may lose out on your expertise, your experience and your specific qualities. The opportunities for you to contribute are there, even on a European level. Getting "Brussels" to listen works both ways. It requires your participation. The classic form of representative democracy, i.e. voting in elections for your party or politician, is still the basic form of democracy. But it is not enough today, because it does not bridge the void between citizens and decision-makers, especially in a context as large as the EU, where

distances are big. And what is more, it does not bring your experience into decision-making; it merely records your ballot (von Sydow 2013, 7).

Civil Society Contributes Democracy and Leads Towards Democracy Development

It is not quite easy to choose definitions on democracy for the needs of this paper. Definitions may be chosen from the ancient times up to the ideas from the most contemporary authors. No matter which one we chose the composition remains the same. It is, as President Lincoln said "of the people, by the people, and for the people". This definition gives almost everything regarding the content of democracy. Opinions of authors related to the elements of democracy are different but the idea is that elements now became to be a general knowledge for scholars. In this spectrum of elements some enumerate 4 elements, the others eights, etc. On the other side how can we define the civil society? Among the many elements that we can take from democracy and the civil society the best would be to say that "the role of civil society is to increase the public participation and to hold officials accountable" (FDI Annual Report). Democracy is a political system where the government is created through a process of free elections. Democracy is a political system where we have active participation in political and civic life. Democracy is political systems were the human rights are ensured. Democracy is a political system where the rule of law is ensured, meaning that laws and procedures are equal to all. To this we can add many other elements which also could be explained more broadly. But this paper doesn't need it. Some explanation is needed if/to what extent the civil society in Kosovo has contributed to these elements of democracy development in Kosovo. And this is not easy to be done. It is easy to enumerate projects, donors, NGOs that implemented these projects, etc. But it is more difficult to measure the contribution to the elements of democracy. There is no mistake if we say that in every element a contribution was given. This is true. But, how much? What benchmarks? Freedom House, Kosovo Foundation for Civil Society, EC Progress reports, and others come with the regular reports. It is usually that in the reports we find phrases like there was a progress, there was a progress from let say 3.5 to 4.00, etc. On the other side one can read the reports submitted to donors regarding achievements and of course the media reports. All these may give an overview; may create a picture or a mirror about the current stage of developments. The focus of NGO activities has changed over the periods of overall development. In the citation taken from the Nations in Transit, there were mentioned phases of the development of NGOs. The most difficult phase for NGOs came after the last mentioned in the report, because in my opinion (from the work in practice in the past) NGOs entered into a phase and into the process of profiling. And the profiling is not an easy process in the country where almost all NGO activities were dependent on the foreign donors, which were moving to other

countries of the world. Before the war the entire Kosovo society was divided into two parts: majority of the population was organized in the parallel system and the minority belonged to the Milosevic's regime. In the pre-war period the CSOs and their activities were in accordance with the activities of the entire parallel system and there we could not see any discrepancies. After the war the NGOs, for the determined period of time with their activities were in accordance with the goals of the international community and with those of local government as well. But this didn't last for a long period of time. Because the situation changed as developments went forward.

Thus, the Kosovo "governmental structures did not need any civil society at all, given that the spirit of corruption began to embrace these structures rapidly. It would, however, have welcomed a facade of civil society, without its content as a make-up for deceiving international community, which demanded healthy civil society" (Agani 2012, 31-32).

This is to the very high extent true. As an activist of civil society I myself have met occasions where I/we were told that it is good to fight against corruption. But under the current circumstances it is good to fight against it as a phenomenon and not to talk for specific names. This because at that time everything was oriented toward a big issue: the status talks-status determination. Therefore, corruption and other issues could wait. There is also something important to note, afterwards, as the cited author underlines. And the international community itself:

> Wanted the emergence (or re-emergence) of civil society, but its political objectives were not always in accordance with political objectives of the Kosovo society, and, therefore, this community was not ready to accept counterbalancing by Kosovo civil society. And, in addition, given its priorities, the goals of international community were not capable of becoming a source of ardor for Kosovo society. As a result of all the facts mentioned above, Kosovo suddenly found itself in a situation in which large segments of its society, simply, started to abstain from politics altogether (Agani 2012, 31-32).

It is worth to be mentioned that the legal infrastructure was favorable for organization and functioning of Civil Society Organizations. Firstly it was UNMIK to adopt e regulation and then Kosovo had a special law for the work of NGOs called Law on Freedom of Association in NGOs (Kosovo Law on Associations, No.04/L-057).

Due to the positive favorable legislation, according to the data from the NGO Public Register of the Department for NGOs of the Ministry of Public Administration:

> Show that a total of 8,112 national organizations and 456 international or foreign organizations are currently registered in Kosovo. From the above, 455 are sports clubs or sports federations, while 7 of them are religious

organizations. With a dozen unregistered initiatives and other types of CSOs, the number of CSOs is higher than that of registered NGOs (KCSF 2016, 15).

As we see from the data a number of NGOs is relatively big in Kosovo. But it is not always the number that indicates functionality of a state and democracy. It could be a big number and the weak state and *vice versa*. Civil society organizations (CSOs) serve to "organize and mediate political, economic, social and other interests' *vis-à-vis* the state and government." (Democracy Reporting International, Berlin 2011, 11). Generally most of Kosovo CSOs have worked in this, but, as it was said, it is a matter of debate their impact or their results. All these circumstances:

> Have engendered a condition in which large number of NGOs, or, more precisely, would-be civil society organizations, flourished, but the spirit of genuine civil society withered. These organizations had plenty of political and financial ambitions, but not too much social enthusiasm. They are still, as we mentioned earlier, divided in numerous ways, and the number of organizations that have the spirit of public good as their guiding principle is small. Indeed, in such a condition, Kosovo politicians will manipulate not only the large national issues, but whatever they can, in order to survive and thrive, if possible. And, for the moment, it is possible. Genuine civil society is weak and most of its organizations became either servants of particular political parties, or servants of the international community (Agani 2012, 31-32).

Kosovo civil society sector has been trying to position itself taking a position that should normally belong to it. But not much was achieved in this sense. It as a sector at a high degree is fragmented, it is dependent at most in donors, some parts of it politicized, some with no ideas about their mission, some lack of courage, some lack of capacities, some change their vision due to the funding, etc. These are known facts and could be found in many reports, surveys, articles, etc., without finding it necessary to mention or cite anyone. Still it is difficult to see and to come up with exact new directions this sector should take not only for itself, but also for the entire Kosovo society. Each produced report gives suggestions and recommendations. Each report tries to draw up road maps, etc., but it is still not enough clear strategy or and/or not enough clear sustainable projection towards further development. Other sectors of the society should have a say in this regard, and not only Civil Society Organizations. International community should be clearer when and while supporting civil society. Government should not behave as Kosovo civil society is a weak sector.

Moreover they should not look at the sector as something that could be used for either government or for the political needs. The only thing that:

> is to be expected in such a condition is that the international community will continue to hope for improvement, the Kosovo political structures will continue to manipulate, and the Kosovo society will continue to watch. And for how long will the Kosovo society continue only to watch, remains to be seen (Agani 2012, 31-32).

Ever since civil society is mentioned theoretically and ever since practice deals with it, its values could not have been contested and the needs for strong civil society sector also could not be questioned. Of course we are talking for democracy and democracy beliefs. But its role was strong also during communism times: somewhere (for example Poland) stronger and somewhere weaker. There could be mentioned various successful campaigns or projects of great importance in Kosovo: campaigns on GOTV (go out to vote), monitoring of the elections, activities on gender equality, etc., etc. These are activities of values and of impact. One can mention rightfully that there should have been done quite more. Now results and achievements are to be discussed but there is a need to conclude that they were a value for democracy in Kosovo. Therefore, International consensus about the value of civil society for democracy, in particular as this bears on fostering both political and social pluralism, is reflected in numerous international instruments. For example:

> Paragraph 8 of the 2004 UN General Assembly resolution invites (among others) non-governmental organizations to engage actively in work at the local, national, sub-regional and regional levels for the constant promotion and consolidation of democracy. Paragraph 12 of the resolution also encourages non-governmental organizations to initiate networks and partnerships with a view to assisting the Governments and civil society in their respective regions in disseminating knowledge and information about the role of democratic institutions and mechanisms in meeting the political, economic, social and cultural challenges in their respective societies. (Democracy Reporting International 2011, 12).

CONCLUSION

Kosovo Civil Society in Kosovo is not quite new in Kosovo society. It has a relatively good history behind, whereas it and its activities based on the results seems to have been more significant in some more difficult situations rather than after Kosovo became independent state. But nonetheless achieved results should not be neglected or minimized. The achieved results can also be categorized into periods of time.

Some were more seen before the war; actually they were specifics of that period of time, the others of the other period of time. The trajectory of the civil society development goes down and up and again depending on the approach we have while measuring results. Within the trajectory we can see differences: some parts (NGOs) of the sector were more successful compared to the others.

Kosovo Civil Society has to reposition itself for the future work. Legal framework is favorable for work of NGOs even though discussions may be developed also for some needs for changes. They should be more engaged to change the public perception for themselves. In redefining their position they should think strategically their long term sustainability and especially having in mind the local resources of finances. The sector should be more pro-active in sense of the activities and not to act after the issues are raised. Kosovo civil society sector is still weak. Even though there almost two decades belong to what we call post war period, the civil society sector remains very dependent on foreign donors. Some strong figures that were very active left the sector and engaged in the politics. But obviously they did not succeed in the politics, at least not as it was thought whereas their departure created a gap in the civil society sector. Even though in the main body of the paper there were not mentioned think tanks (as very successful with their reports) and other specific NGOs or networks, it is important to mention that some networks have left good tracks behind either being ad hoc or in form of issue based forms.

Kosovo civil society sector with all weaknesses it had and it has, has played a role in democracy development in Kosovo. The needs for a strong civil society sector are perhaps bigger than really it can produce at the current time and circumstances. Challenges are big and they continued to be not only an obstacle for democracy development. Even more.

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Indexing
Abstracting

UNDERSTANDING AND COMBATING JUDICIAL CORRUPTION

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Abstract

The research item of the paper is the term "judicial corruption". This particular term was ignored in the majority of countries of the Council of Europe. Judicial corruption as a term was first mentioned in the PACE documents- Resolution 1703 (2010) on judicial corruption. The author is trying to give answer to the question- Could there be a balance between establishing the responsibility of the judge and the independence guarantees? The term judicial corruption should not be manipulated with, i.e. the criminal cases of corruption where the judges and prosecutors are involved should be proved and led in line with all ECHR Article 6 fair trial requirements, and in compliance with the principle for presumption of innocence.

Keywords: judicial corruption, GRECO, Council of Europe, ECHR

INTRODUCTION

In the course of implementing the fourth evaluation round, GRECO (Council of Europe, Group of States against corruption), did not consider the term "judicial corruption", and this particular term was ignored in the majority of countries of the Council of Europe. Judicial corruption as a term was first mentioned in the PACE documents (Council of Europe Parliamentary Assembly) - Resolution 1703 (2010) on judicial corruption, however, it was not defined. Instead of considering this term, the

entire issue was reduced to the area of judicial ethics, promotion of judicial integrity and other. The newest PACE document Resolution 2098 (2016) states that:

> Judicial corruption severely impedes the protection of human rights, in particular judicial independence and impartiality. It also undermines public trust in the judicial process and infringes the principles of legality and legal certainty. Judicial corruption takes complex forms and comprises corruption related both to cases and to the career of a judge. Council of Europe member States must channel their efforts with regard to both of these aspects and provide effective mechanisms which allow for identification and investigation of cases of corrupt practices in the judiciary, and adequate sanctions for perpetrators (Council of Europe: Judicial corruption: urgent need to implement the Assembly's proposals).

Generally speaking, corruption is defined as the abuse of entrusted power for private gain. That formulation ensures that both private and public corrupt practices are covered. Corruption can be individual or institutional. The term is not precisely defined in the 2003 UN Convention against Corruption. The forms of corruption evolve continuously. It goes further than paying or taking a bribe and encompasses a large range of acts and omissions including bribery, abuse of functions, and misappropriation of State funds, illicit enrichment, or trading in influence (UN Convention against Corruption, 2003). Integrity (Latin: *Integritas*) means "whole and complete", synonyms are: honesty, decency, inseparability, sincerity, truthfulness, consistency of actions, values, methods, measures, other moral values of a person, who is not suspectable to corruption pressure and to whom the public interest is beyond her/his private interest.

Transparency International defines judicial corruption as "misuse of the position for personal purposes, gain of tangible or intangible advantage, influence peddling for the purpose of speeding up or slowing down the court cases, trading with information" (Transparency International Corruption Index). Political corruption in the judiciary means political influence on decision making process, manipulation with appointments, allocation of cases, unfounded reassignment, politically motivated dismissals, realization of career ambitions. Transparency International defines judicial corruption as misuse of the position for personal purposes, gain of tangible or intangible benefit, influence peddling for the purpose of speeding up or slowing down the cases, information trading, etc. Most common case of political corruption is the political influence on judicial decision making, judicial election manipulation, allocation of cases, unfounded reassignment, as well as politically motivated dismissals.Political corruption appears in the form of realization of career ambitions or professional aspirations. The term judicial corruption should not be manipulated with, i.e. the criminal cases of corruption where

the judges and prosecutors are involved should be proved and led in line with all ECHR Article 6 fair trial requirements, and in compliance with the principle for presumption of innocence. For example in Macedonia in the case JUSTITIA, twelve misdemeanour judges have been shown on breaking news in the media when entering the court building, apprehended by police officers, but recently, after seven years since the commencement of the procedute, the first instance judge has adopted a decision for their acquittal of accusation.

From the few analyses and researches in this area, there is insufficient information for effectively completed cases of judicial corruption. It can be a result of two things: first, that such case do not exist, and second, that there is no available information on judicial corruption related cases. However, if insufficiencies exist in the legal frame and/or the perception indicators show lack of confidence with regards to judiciary, then one can conclude that the judicial corruption benefits from impunity and the entire system becomes subjected to corruption. ECtHR is cautious and prefers the conclusion that the there is lack of independence in the concrete case, rather then that the decision is a result of corruptive practices (Bratza 2014). Conducted GRECO evaluations related to the Fourth Round Evaluation (Prevention of corruption among parliamentarians, judges and prosecutors)(Council of Europe 2018), so far, show two categories of countries and legal systems, which, considering the specifics of the legal tradition, culture and mentality, lead to different systems for determining the responsibility of the judges when it comes to violation of ethics. The first are the so-called "old democracies", where the judges are still elected by the legislative or executive authority; they have no strict regulations and criteria for election, promotion, evaluation, distribution of cases, and no system for conflict of interests, asset declarations or even lack of written ethical rules. Still, there is perception of long historical public trust and respect in the judiciary, strong social control, low number of dismissed judges, developed system of judicial transparency, self-control of the ethical violations, developed system for reporting violations of ethical principles, high level of integrity. On the other hand, there are the countries of "new democracies" aspirers for EU accession and the new EU member states, which adopted all international anti-corruption standards, but have weak implementation, existing low perception level of trust and high disrespect of judges among citizens., high number of dismissed judges, subjected to disciplinary procedures which are often criticised as a method for political rooting out of disobedient judges.

FIST LEVEL DIRECTED TOWARDS IMPLEMENTATION
OF THE CODE OF ETHICS

In the reports adopted so far, GRECO recommended the judiciary to detect the risks of conflict of interests and corruption by itself and show its capability for handling thereof. The judiciary can do that by implementing the given recommendations for establishing advisory bodies within the judiciary, which is in compliance with all documents of the Council of Europe and the Opinions of the Consultative Council of European Judges (CCJE), with regards to the implementation of the ethical rules (Council of Europe 2018). That is the first step towards self-discovery and self-detection of the responsibility for violation (or possibility for violation) of the ethical rules in form of self-reporting by the judge. The judges should be able to address their problem to the advisory body which will provide reliable advice in a confidential manner, whereby the good practices will be compiled and published in order to serve to other judges as a guide for application of the code. In addition, several problematic issues are addressed: how to elect a body constituting of judges with the best virtues in their personal and professional life, lacking any perceived or actual conflict of interests, highly respected in the so-called "judicial community" where the judges are fully trusted when it comes to sharing ethical dilemmas. It should perform its functions according to the highest discretion and confidentiality level with clear distinction of the competences between the said body and the disciplinary body. Another problems could be whether the case will be under the competence of the disciplinary body, whether the reported conduct presents less or more severe violation of the ethical rules, the danger of prejudice and personal feelings of sympathy, aversion, which impairs the impartiality of the entire process. This mechanism can transfer into a system, only in an atmosphere and culture of transparency, mutual trust, respect and discretion among the judges.

Example of Good Practice

The Judicial Conference of the US Committee on Codes of Conduct deals with the confidential advising of judges in the daily implementation of the ethical principles. These opinions are advisory and published anonymously on its website. Some of the advices refer to the possible service on Governing Boards of NGO; disqualification where long-time friend or friend's law firm Is counsel; acceptance of hospitality and travel expense reimbursements from lawyers; membership in a political club; disqualification based on stockholdings by household family member , commenting on legal issues arising before the Governing Board of a Private College or University ; participation in fund raising for a religious organization; service on Governing Board of a Public College or University; acceptance of public testimonials or awards. Appearance

before a legislative or executive body or official, political involvement of a judge's spouse; extrajudicial writings and publications; use of title "Judge" by former judges, gifts to newly appointed judges; use of electronic social media by judges and judicial employees ("Published Advisory Opinions". United States Courts 2018).

Responsibility of the Judges and Functional Immunity

When the responsibility of the judge is established, one must not invade the merit – content of the judicial persuasion and the inherent view, since the judges are not subjected to responsibility of the matters expressed in the decision, views i.e. what they decide on in judicial capacity. The interpretation of laws, measurement and weighing of evidence or assessment of facts must not be connected with criminal, civil or disciplinary responsibility, with the exception of cases of malice or rough negligence. Therefore, one must establish what is judicial reasoning and decision and their extent, which is quite difficult task. In the Concept of Law, the legal positivist H. L. A. Hart says that:

> The judges must make a choice which is neither arbitrary nor mechanical, whereas the judicial values leave their mark, such as independence, neutrality in the search of alternatives, taking account of all affected parties and giving explained reasons for the decision. The decision cannot be exceptionally well-judged; it can only be acceptable as explained, reasonable product of informed and impartial choice (Hart 2014).

The boundaries of judicial reasoning are limited and due to such reason the decisions are controlled via legal remedies which correct the intentional and unintentional errors of the judges. In general, the errors are considered as unwitting acts. The international documents do not determine the terms judicial error, fallacies, intentional violation of law, professional/ethical duties, intentional and rough oversights thoroughly, which will facilitate the definition of the limits marking the commencement of establishing the responsibility of the judge. On the other hand, that increases the risk of their arbitrary interpretation by the ones determining the level of guilt, qualification of violations, evidence and facts that will be gathered, and the questions raised as to their independence, expertise, personal and political affiliations, political background, prejudices, reasoning and logic, which may invade the merit of the decision and the persuasion of the judge. Clear definition of "performing judicial duties" is crucial, since it presents a basis for responsibility – for the conduct and acts conducted beyond the performance of the judicial function, the judges are subjected to responsibility as any other citizen). It should be distinguished when the judge is on duty and what the true meaning of professional performance of duties is. That is the time when the judge performs all activities related to official actions and process authorizations.

However, it is a fact that the judges are subjected to the code of ethics with regard to the profession, not only during the performance of their official actions, but also beyond their working hours (some say that they play the role of a judge 24/7). Other fact is the establishing of malice or rough negligence, clear definition and pronouncing of the acts of disciplinary violation, existence of clearly defined procedure with all procedural guarantees in front of non-political body(this term is introduced in the 2016 Action Plan of the Committee of Ministers, which is disputable in case of existence of different systems for election of bodies competent for solving the status issues of judges).The sanctions must apply proportionally and not be pronounced out of arbitrary or political motives (Action plan, Council of Europe 2016).

SUMMARY ANALYSIS FROM THE COMPARATIVE PRACTICE OF THE GRECO FOURTH EVALAUTION ROUND REPORTS WITH REGARDS TO THE RESPONSIBILITY OF JUDGES

The disciplinary responsibility applies to violation of ethical (e.g. incompatibilities) or professional duties. In some countries, the violations of ethical rules, such as less or more severe offence, are deemed as disciplinary violations. The violations are divided in two levels (less and more severe) or in three categories of offences, petty offence, less severe offence and more severe offence. The ethical violations may be included in all three categories, depending on the type of conduct. In some countries, there is an attempt for distinguishing the violations of ethical rules from the violations of professional duties, even though they are often confused; as well as the less and more severe ethical violations, due to their valuable importance and evaluation of the ethics according to the culturological, social and legal tradition – in many cases, it seems that they are just listed on a paper and therefore, glossaries, manuals and instructions are needed for everyday use; furthermore, the ethical and professional violations are not clearly distinguished from the appellate bases, thus creating additional danger from arbitration. Professional violations refer to violations related to timely schedule of hearing, timely decision making and writing, wrong decision, non-performance of other official duties, severe violation of provision of substantive or procedural law, lack of decision explanation, intentional non-reporting of conflict of interests and property are deemed as more severe violations of the discipline or due to severe negligence. Ethical violations refer to conduct harming the institution image, alcohol consumption, acts discrediting the personal reputation and the reputation and authority of the court, violation of ethical principles with regards to clients, colleagues, president of court and personnel, experts, prosecutors and lawyers, harm caused to the dignity and function, conduct endangering the trust in independent, impartial, professional and fair decision making by the courts.

Criminal responsibility - refers to criminal acts such as incriminations of bribe, authorization misuse and unauthorized disclosure of secret and confidential information. In some of the countries, the judges do not enjoy any immunity. In other countries, there is a criminal responsibility for involvement in conflict of interests and distortion of justice for the benefit or to the detriment of one of the clients (perverting the course of justice).

Civil responsibility – the judges cannot have civil responsibility for a damage caused to one of the clients, as a result of judicial error or civil responsibility for individual court decisions; however, there is a possibility for damage claim in case of intentional damage or severe negligence.

Immunity - GRECO has a sound view that the judges should enjoy protection from unfounded intrusions during the performance of their duties and therefore, they are granted with so-called functional immunity. However, at the same time for the purpose of implementing the 20 Guiding Principles on fight against corruption (Committee of Ministers, Council of Europe 1997), the immunity of judges should be limited to activities referring to their participation in the judiciary administration. The functional immunity must not be perceived as unlimited right of the judges and must not create the impression of judges as untouchable, and the deprivation of the immunity is necessary for the purpose of prosecution when the decision is a result of criminal act. With regards to the issue about the status and reputation of a judge deprived of immunity, we have a case where, upon the request of the Special Public Prosecutor's Office, a procedure was initiated for criminal act with reference to decisions adopted by administrative judges in the electoral process, the Judicial Council deprived the judges of their immunity, and the said judges have recently again decided on the occasion of the new local election. The term of reputation risk has been introduced by the "Deloitte" the brand dealing with creating management risk plans for large companies, states that the company's reputation is perhaps its most valuable asset and has the leading role among risks and is named as killer of the values. The massage for everyone who produces and sells values, must seriously take care of its reputation and the danger to which it is exposed. Extreme cases may even lead to bankruptcy (as in the case of Arthur Andersen). Recent examples of companies include: Toyota, Goldman Sachs, Oracle Corporation, NatWest. The measures for establishing the responsibility must not be taken for the purpose of repressions and vengeance towards the judges for particular political decision. Most of the ECHR judgments refer to violation of freedom of expression, referred to in Article 10 of ECHR, in cases where the judges publicly criticized particular conditions in the judiciary, for which disciplinary procedures were initiated against them and they were dismissed from their function (Baka v. Hungary, Kudeshkina v. Russia, Volkov v. Ukraine, Harabin v. Slovenia).

THE SITUATION IN THE REPUBLIC OF MACEDONIA

For the period of 10 years (2006-2016), 15 applications were stopped, 1 rejected, 44 judges were dismissed, 1 application was rejected, only 1 fine was pronounced for disruption of interpersonal relations, 2 for lustration, and out of all dismissed judges only 4 are appellate judges, of whom two presidents, and the others are judges and presidents of basic courts who, in some of the cases, are dismissed for actions in many cases or actions in one case only. In the last two years, 5 procedures were initiated.

In 4 cases, ECHR decided that Article 6 was violated in the course of leading disciplinary procedure. We can come to the conclusion that there are obvious reasons and presumable (hidden) reasons. In the disciplinary decisions some characteristic reasons are specified which may indicate doubt of corruption and payment purposes, such as decision making by one individual instead of the council, awarding property to the detriment of the country, making two decisions in one case and disappearance of the case, non-submission of fines for collection, obsoleteness of great number of misdemeanour cases, decisions for revocation of detention without having legal conditions, provisioning of passport, procrastination of investigation procedures, judging the wrongly accused person, while the real perpetrator escaped, judging in cases where the spouse is forensic scientist, etc. If one monitors the further conduct of a dismissed judge (they became lawyers, professors, found a job in the politics), one can conclude that there are indications about their former connections; however, these are only indications and speculations. Among the judicial community there are doubts about the honour of particular judges related to sharing money with lawyer's offices, nepotism in the relations between the judge and lawyers – relatives, violation of the rules for public procurement, non-exemption in case of having legal or other basis, public – private partnership for procurement of computer and other equipment for the courts, corruption of foreign projects which are hard to prove, decisions for the benefit of the interests of the political parties, business, lobbying connections.

Only in two cases where severe violation of the code of ethics was established, the judges were effectively judged for crimes, one for taking bribe and the other for unconscientiously work while holding an official positioning all other cases of judge dismissal, many violations were combined for unconscientiously and unprofessional performance of the judicial duties and violation of the code of ethics, and in particular cases they were mixed, whereby in one case the prejudiced leading of the procedure for the benefit of one client was deemed as violation of the code of ethics, in combination with other acts of unconscientiously and unprofessional performance of the judicial duties. In other case, violation of the principles for impartial treatment of the clients was established, which action was not classified as violation of the code of ethics, meaning that there are differences in the classification of the actions.

In other case, severe violation of the court reputation and judicial function was established; however, the action was not classified as violation of the code of ethics. In one particular case, the non-pronouncing of judicial decisions and non-preparation of written decisions within the give deadline was deemed as violation of the code of ethics, while in other cases that was deemed as unconscientiously and improper performance of the judicial duties.

Not all of the judges against whom procedures were initiated are suspended, and this fact leaves the clients, whose cases are submitted to those particular judges, with the impression of selectivity and uncertainty. In particular cases, under one and the same basis, some of the judges are dismissed, while for other judges the procedures are stopped, which creates a confusion and doubt for possible selectivity of the disciplinary body. All of this should be subject to a thorough analysis; however, it is a fact that the specified decisions indicate that the Judicial Council does not fulfil the preventive function and allows the problem to escalate to the extent where the only solution is dismissal of the judge.

CONCLUSION

Could there be a balance between establishing the responsibility of the judge and the independence guarantees? We deem that the hardest task in the process of establishing the responsibility is not to invade the merit of the case, since the clues for existence of doubt for some kind of messiness in the work of the judges appear once the decision is made and pronounced, when the clients can inspect the reasons and explanation (and rationality).

In most of the cases, disciplinary violations refer to unconscientious and unprofessional performance of duty, and the actual reasons are not always "obvious". In most of the cases, upon the initiation of disciplinary procedure against judges, they "ingenuously" resign their position in order to avoid the presentation of evidence for establishing the actual reason for their dismissal, so that they can appear innocent to the public, which on the other hand causes anger and demotivation of the majority of honourable judges. Hence, it is difficult to determine whether the judges are dismissed due to their corruptive conduct, since only in small number of cases referring to the dismissal of judges a criminal procedure was initiated, whereby, considering the presumption of innocence, the circumstances related to the corruptive conduct of several judges remain in the lobby, and that hypocrisy eventually creates perception of persistence and protection of the corruption of the judges and non-existence of the will for judicial resolution of the case.

On the other hand, when the actual reasons are not presented, some of the judges play the role of political victims of vengeance for adopting particular decision,

which once again creates a bad image of the judiciary.When the actual reasons are not transparent, some of the judges play the role of political victims of revenge for adopting particular decision, which once again creates a bad image of the judiciary (5 of them applied for the post of General Public Prosecutor - no rules for cooling period).

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